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Current Topics.

Westminster Hall.

THE striking and impressive scene in Westminster Hall last week, when the President of the French Republic and the members of the two Houses of Parliament exchanged the heartiest of greetings within its historic walls, thus demonstrated once again the solidarity of the *entente* between France and England, especially in these days of anxiety in international relationships. The meeting could have had no fitter setting than in the venerable hall which, by its impressive stateliness, symbolises the basis of all well-ordered society—law and order. To lawyers in particular the scene must have revived memories of the days when the hall was the very centre of the legal life of the nation. It was the scene of many historic trials, among others that of WARREN HASTINGS, a circumstance which afforded MACAULAY the opportunity of embodying in his famous essay a purple patch descriptive of the wealth of memories that cluster round its walls. But, apart from these great historic occasions, lawyers like to recall the Hall as the very hub of their professional life. Its interior must have had an inviting appearance in the old days with its crowds walking up and down, eager to witness the trial of cases in the adjoining courts. Especially on the opening of term it must have presented a particularly animated spectacle. We are told that to receive the judges at the opening of term the Serjeants took up their position on the west side of the hall immediately before their court. There, standing in single file, with their faces towards the east wall, they awaited the arrival of the judges, first the Lord Chancellor and then the others in order of seniority. On coming up to the Serjeants the Chancellor shook each of them by the hand, saying, as he did so, "How d'ye do, brother? I wish you a good term." Having thus greeted each wearer of the coif, his lordship, attended by his officers, passed on to the Chancery at the southern end of the hall. In like manner each judge greeted each Serjeant, and then passed each to his own court. It would appear also that at one time a brisk business was carried on in the hall by the sempstresses who manufactured bands and cuffs, lace ruffles and lawn kerchiefs for the grave counsellors and the young gallants of the Inns of Court. The great hall of the present Law Courts, impressive though it is in some respects, is, after all, a poor substitute for the ancient and historic hall at Westminster, which filled so dignified a place in the legal life of London. As one writer some years ago pointed out, when he visited the Law Courts hall, it appeared to be tenanted only by one messenger boy. A change, indeed, from the animation which we associate with Westminster Hall!

Judicial Committee of the Privy Council: Preparation of Cases.

ON Monday, LORD ATKIN, when presiding over the First Division of the Judicial Committee of the Privy Council, made reference to the importance of the correct preparation of cases in appeals to the Board. Attention was drawn to r. 63 of the Judicial Committee Rules, 1923, which provides that the case shall consist of paragraphs numbered consecutively and shall state, as concisely as possible, the circumstances out of which the appeal arises, the contentions to be urged by the party lodging the same, and the reasons of appeal. According to the note on the matter in *The Times*, the learned lord said it was very important that appellants should remember what the rule was. Their lordships attached considerable importance to those cases, and they expected to have them prepared in accordance with the rules so as to give their lordships the necessary assistance.

The Selden Society.

THE annual report for last year of the Selden Society was adopted at a meeting held on 23rd March, a report of which appears at p. 262 of this issue. The President, LORD WRIGHT, who was in the chair, stated that the work of the society was of the very highest importance and instanced in this connection the publication from time to time of the various reports, rolls and records of the Law of England. They had in their books a unique historical memorial of the early development of the law, and anyone who was so minded could, with the help of the admirable translations and introductions which appeared in the society's series, make himself acquainted with the way in which lawyers and judges regarded the problems of the common law. If one took for instance, the learned lord said, one of the volumes recently published and selected a case in the Court of King's Bench in the reign of Edward I, and read it in the admirable form in which it was produced, one would realise that the English used in the

reports was the same English as we used ourselves. It was true the dialect was very different, but one did not feel one read a strange law. One was reading the common law which had come down to us continuously since those days. Forthcoming works include Vol. III of "Select Cases in the Court of King's Bench under Edward I," by Mr. G. O. SAYLES, D.Litt.; "Rolls of the Justices of Eyre," by Mrs. DORIS M. STENTON; a volume of "Year Books of Edward II," by G. J. TURNER (Vol. X of the "Year Book Series"); a volume of "Year Books of XI Edward II," by Professor Sir WILLIAM HOLDSWORTH, K.C., and Mr. J. P. COLLAS; and a volume of "Cases in the Exchequer Chamber," by Miss HEMMANT. LORD WRIGHT referred to a slight decrease in membership during the year and said they would like to see it increase, for it was on members' subscriptions together with certain special donations that they depended to carry on their work.

Unemployment Insurance and Holidays with Pay.

THE Unemployment Insurance Bill was read a second time in the House of Commons on Tuesday, the money resolution in connection therewith being agreed to in Committee. Mr. E. BROWN, Minister of Labour, explained that the Bill proposed to amend the Unemployment Insurance Acts, 1935 to 1938, and to make provision for the payment of contributions under the National Health Insurance Act, 1936, and the Widows', Orphans', and Old Age Contributory Pensions Act, 1936, in respect of holiday periods. The term "holiday" was not at present used in the Unemployment Insurance Acts. The Acts provided that the applicant for benefit must be unemployed and that he must be available for work. All the practices concerning holidays under the Acts with regard to many types of holidays were now regulated by a number of decisions of the Umpire. The necessity of legislative action was imperative, not only because of the great variety of circumstances and their growth, but because of the rapid increase of holidays with pay. Attention was also drawn to the fact that the Bill extended the provision of payment of dependants' benefit, and gave the Minister power to provide training courses for those between sixteen and eighteen years of age. The Bill, it was said, aimed at placing unemployment insurance with relation to health on a straightforward footing, made a number of changes in favour of the insured contributor, and made amendments where experience had shown that the present law was capable of improvement. Mr. LENNOX-BOYD, Parliamentary Secretary, Ministry of Labour, thought that one result of the Bill might well be still further to stimulate the desirable movement for holidays with pay. The only sound basis for healthy holidays, he said, was holidays with pay, and wages should be adequate to allow people to enjoy themselves and to put something by in the preceding weeks. Permanently to continue the present confusion would be to hold up the development of holidays with pay.

The Access to Mountains Bill.

IT is satisfactory to note that a number of safeguards have been introduced in Committee into the Access to Mountains Bill, on the motion of Mr. CREECH JONES, its promoter. A new clause, which was agreed to last Tuesday by the Standing Committee of the House of Commons, which is considering the measure, contains a list of fifteen prohibitions with respect to the conduct of persons granted access to land by virtue of the Bill. These include the riding of cycles and other vehicles, lighting fires, failing to keep dogs under proper control, removing plants and shrubs, disorderly conduct, and not shutting gates. It was observed that these were not merely safeguards to the landowner but were in the main general standards which would be observed by all decent members, not only of rambling clubs, but of the public. An amendment to the effect that dogs should not be allowed to accompany their owners, put forward on the ground that such animals, which might start out well-behaved, were always liable to disappear after a rabbit and not been seen again for the rest of the day and, perhaps, became an extreme nuisance to the countryside, was defeated, it being pointed out that the Minister would be able to restrict or prohibit the presence of dogs if the circumstances were such as to necessitate a restriction being imposed. A week earlier an important amendment was moved by the promoter of the measure and accepted. This provides that a person shall not be excluded from mountains or moorland between one hour before sunrise and one hour after sunset, if there for the purpose of air and exercise, so long as certain conditions are observed. These limitations, it was said, would be set out by the Minister in an order applying to the land. The ordinary law of trespass would apply during the night and the margin of one hour would give reasonable time for ramblers to get off the land after sunset. An amendment to the effect that the benefits of the Bill should be restricted to members of associations, on the ground that such were not likely to do the damage that might be done by any individual, was rejected. This, Mr. CREECH JONES urged, would be far too restrictive and would impose a real hardship on people who lived in industrial towns and wanted an occasional day on the moors.

Discharged Prisoners' Aid.

IN a recent broadcast appeal the Home Secretary dwelt upon the value of the work performed by Discharged Prisoners' Aid Societies. There were, he said, forty-five of these societies banded together in national association. Day in and day out their representatives were active in the prisons, getting to know the prisoners, helping in many cases their families which might be left penniless by the loss of the breadwinner, and trying to find work for the prisoners whose sentences were over. The societies' agents kept in touch with employers and there was close contact between their work and the machinery of the employment exchanges. Sir SAMUEL HOARE gave a number of instances illustrative of the value of the work and urged his hearers to think of those cases and to think particularly of the prisoners who came back dazed and strange into the free world. Freedom for them might easily mean nothing more than a liberty to drift back into crime. If liberty were to mean a new and better thing they must have a helping hand; it was that that the prisoners' aid societies extended to guide them along the right road. The extensive character of the work may be indicated by the fact, duly recalled by the Home Secretary, that last year nearly 30,000 cases of discharged prisoners were dealt with by the societies.

Probation for Adults.

IN a recent address delivered on the occasion of the annual meeting of the West Riding Branch of the National Association of Probation Officers at Doncaster, Mr. S. W. HARRIS, Assistant Under-Secretary of State, Home Office, drew attention to the growth of the probation system during the past few years. Of the indictable offences in the adult courts, he said, 19 per cent. had been dealt with under the probation system in 1933, compared with 11 per cent. in 1910. Corresponding figures for the juvenile courts were 64 and 26 per cent. But it was a mistake to regard the probation system as one only for young offenders. It might, it was urged, be said that probation was more important for the adult than the juvenile, for there was a great difference between taking away an adult from his home life or work and taking away a boy or a girl from his or her ordinary conditions. It was sometimes best, when home influences were bad, for a boy or girl to be taken away. The fact that probation in the case of the adult offender did not involve his removal was, the speaker implied, one of its great advantages. The magistrates were invited constantly to watch the work of their probation officers, and to make sure that these officers had time to supervise every case put under their supervision. The work of the probation

officer, it was said, was changing in character and becoming more of a career than a voluntary occupation. It was a technique that required skill and experience, and was very difficult if it was to be done successfully. "We are looking forward," Mr. HARRIS said, "to the time when every court will have the services of a trained probation officer or a trained social worker, not only for the supervision of offenders but for a great many other duties, such as making inquiries and conciliation."

Local Government Superannuation: Minister's Decision.

FURTHER decisions of the Minister of Health on points raised under the Local Government Superannuation Act, 1937, may be briefly summarised as follows: One employed by an urban district council in the electricity department as meter reader and prepayment meter collector is an "officer," and as such will, on 1st April next, become a contributing employee under the Act. A similar conclusion was reached with reference to a whole-time manager of public baths, whose duties included the management and supervision of the staff, the responsibility for the records and cash receipts of the clerk employed in the ticket office, swimming instruction and the supervision of bathers. A period of service under the Douglas Corporation, Isle of Man, is not reckonable as service for the purpose of the Act. One appointed last May as a temporary valuation assistant will, if remaining in his present post on 1st April next, become a contributing employee, the provisions of s. 30 (1) only applying where the temporary employment is for a definite period of two years or less. One employed as a medical officer of health, whose previous service under other local authorities together with the period of his service under his present employing council prior to attaining the age of sixty-five exceeds in the aggregate ten years, is not precluded by s. 3 (4) (c) from becoming a contributing employee. In the case of a supplementary school teacher employed in a non-provided school, it has been decided that, having regard to s. 18 and the definition of "service" in s. 40 (1), the provisions of the Act as to the reckoning of previous service are to be construed as applying to all service in the employment of the managers of the school in which the teacher is serving on the date when she becomes a contributory employee, but previous employment with other managers of non-provided schools cannot be so reckoned. Finally, a period of previous service with a Board of Guardians, during which the appellant officer contributed under the Poor Law Officers' Superannuation Act, 1896, but in relation to which he did not become a "transferred poor law employee" or a "transferred rating employee," is not reckonable as contributing service under the Act of 1937.

Recent Decisions.

IN *Toogood* v. *Meredith* (*The Times*, 24th March), which was heard before GREAVES-LORD, J., and a common jury, the plaintiff was awarded £410 damages in respect of personal injuries sustained by him when acting as groom in charge of a party of children, aged ten to twenty, engaged in a "treasure hunt" at a meet of a pony club. The plaintiff alleged that the defendant, one of the party, crushed past him in a narrow place with the result that her horse kicked his arm. The defendant denied negligence and pleaded the maxim *volenti non fit injuria*.

In *Chief Fakisandhla Nkambule* v. *The King* (*The Times*, 24th March), the Judicial Committee of the Privy Council granted the petitioner special leave to appeal from a conviction of murder and sentence of death passed on him by the Special Court of Swaziland. One of the grounds of appeal was that a translation of a letter said to have been dictated by the petitioner (who was quite illiterate) had been wrongly put before the court. The translation had never been proved and admittedly contained an error which made a certain passage probably incriminating evidence against the petitioner.

In *Rex* v. *Mills* (p. 259 of this issue), the Court of Criminal Appeal (LORD HEWART, C.J., and MACNAGHTEN and SINGLETON, JJ.) allowed the appeal of one who had been convicted before the Recorder at the Central Criminal Court of obtaining a cheque by false pretences. The ground of the appeal was that the Recorder had misdirected the jury in directing them that it was in keeping with their duty for the minority to accept the decision of the majority, and in telling them that he could not release them until they had reached a verdict. LORD HEWART, C.J., intimated that there could be no doubt what the Recorder had intended to convey, but he had used one or two perilous phrases which might conceivably have caused some members of the jury to incline their minds to a wrong view.

In *Pardy, A. M.* v. *Pardy, A. W.* (*The Times*, 28th March), LANGTON, J., held that a deed of separation entered into in 1932 in accordance with the terms of which the husband had paid an agreed sum, but for twelve weeks only, barred a plea of desertion put forward by the wife in a petition for dissolution of marriage. The learned judge intimated that where a deed of separation is entered into in a *bona fide* spirit between the parties the court cannot go behind the deed to inquire into the facts which brought about the real division between them, and that where spouses are living apart under a deed of separation such relationship, begun by consent, cannot be changed into desertion by a mere refusal of either party to resume cohabitation or by a breach of the covenants of the deed.

In *E. E. and Brian Smith* (1928), *Ltd.* v. *Wheatsheaf Mills, Ltd.* (*The Times*, 29th March), BRANSON, J., held that the maxim *nemo bis vexari debit* did not bar a claim for damages for breach of contract put forward in a second arbitration by buyers who in a former arbitration had recovered a sum on the footing that they were entitled to reject a consignment of peas which they said were in such a damaged state as to be useless to them. The learned judge held that the contract was subject to a trade custom that arbitration might take place by stages, and that in any case at the time of the former arbitration a right of action for damages had not matured inasmuch as it was still open to the sellers to make a good tender under the contract: *Barrowman* v. *Free*, 4 Q.B.D. 500.

In *Norreys* v. *Zeffert* (*The Times*, 29th March), ATKINSON, J., held that a sum claimed by the plaintiff was irrecoverable as owing in respect of bets on horseraces within s. 18 of the Gaming Act, 1845. The learned judge intimated that a threat to report the defendant to Tattersalls was one which the plaintiff was entitled to make, and a promise to refrain from reporting him would be a good consideration for a promise to pay (*Hyams* v. *Stuart King* [1908] 2 K.B. 696; *Thorne* v. *Motor Trade Association* [1937] A.C. 797), but held on the facts of the case that no such contract had been made.

In *Geraghty* v. *Morris* (*The Times*, 30th March), a Divisional Court (LORD HEWART, C.J., and MACNAGHTEN and SINGLETON, JJ.) reversed the decision of a stipendiary magistrate, and held that under s. 6 (6) of the Road Traffic Act, 1934, a magistrate who has found that a driving test has been conducted in conformity with the regulations under the Act, is not in a position to inquire into the circumstances of the test itself, and to determine whether an examiner is justified in failing to pass one who submits himself for a test of competence to drive.

In *Pagett* v. *Mayo* (*The Times*, 30th March), a Divisional Court (LORD HEWART, C.J., and MACNAGHTEN and SINGLETON, JJ.) upheld a decision of magistrates to the effect that damage to a wall was not "damage or injury . . . to any person, vehicle or animal" within the meaning of s. 22 of the Road Traffic Act, 1930, and that the driver of a motor car who did not give his name or address to any person having reasonable grounds for so requiring and did not report an accident, involving damage to a wall, had not committed any offence under the section.

Criminal Law and Practice.

ADDITIONAL COUNTS IN MANSLAUGHTER INDICTMENT.

It has always been the practice on charges of murder not to add any other counts to the indictment. A. T. Lawrence, J., delivering the judgment of the Court of Criminal Appeal, in *R.* v. *Jones* (1918), 13 Cr. App. Rep. 86, in which the appellant was charged on an indictment containing two counts, one of murder and one of robbery with violence, said: "The court thinks that in cases of murder the indictment ought not to contain counts of this kind. A trial for murder is too serious and complicated to have such counts inserted, and such was not the intention of the Indictments Act, 1915. The proper course is to have a second indictment in such a case and then, if the prisoner is acquitted of murder, or is convicted and the conviction quashed, he can be tried on the second indictment." The peculiar result of this case, that the appellant had been sentenced to death and to ten years' penal servitude, was corrected and the sentence of penal servitude was quashed, the appeal against the murder conviction being dismissed.

A wider principle was laid down by Avory, J., in *Surrey Justices: ex parte Witherick* [1932] 1 K.B. 450, at p. 452, where he said: "It is an elementary principle that an information must not charge offences in the alternative, since the defendant cannot then know with precision with what he is charged and of what he is convicted and may be prevented on a future occasion from pleading *autrefois* convict." This principle is usually invoked to quash an indictment where one count charges two separate offences in the alternative.

It has been clearly held that a charge of dangerous driving, contrary to s. 11 (1) of the Road Traffic Act, 1930, should not be made a count in an indictment charging manslaughter. In *R.* v. *Stringer* [1933] 1 K.B. 705, the appellant was charged in the same indictment with manslaughter of a man who was knocked down and killed by his motor-lorry, and also, in a separate count, with driving the lorry in a manner dangerous to the public, contrary to s. 11 of the Road Traffic Act, 1930. "If the two charges are made," said Lord Hewart, C.J., in delivering the judgment of the court, "the proper practice, in our view, is that there should be two separate indictments, and if that course is followed the confusion which may conceivably have arisen here will be avoided." (See also *R.* v. *Carr*, 24 Cr. App. Rep. 199.)

The Court of Criminal Appeal has now, in *R.* v. *Large* (83 Sol. J. 155), laid down as a matter of general principle, that no other count at all should in future be added to an indictment for manslaughter. The case for the Crown had been that the appellant, who was a woman of good character and usually good tempered, had lost her temper as a result of the dirty habits of a child who was in her custody and control, and inflicted a wound on the child from which he died. The indictment contained two counts, the first charging her with manslaughter of the child, and the second with an offence under s. 1 (1) of the Children and Young Persons Act, 1933.

That sub-section provides: "If any person who has attained the age of sixteen years and has the custody charge or care of any child . . . wilfully assaults, ill-treats, neglects or exposes him . . . in a manner likely to cause him unnecessary suffering or injury to health . . . that person shall be guilty of a misdemeanour. . . .

By subs (4): "Upon the trial of any person who has attained the age of sixteen years and is indicted for infanticide, or for the manslaughter of a child . . . of whom he had the custody, charge or care, it shall be lawful for the jury, if they are satisfied that he is guilty of an offence under this section, to find him guilty of that offence."

In *R.* v. *Large* (above) the appellant had been found guilty of manslaughter and sentenced to twelve months' imprisonment. The inclusion of the count under the Children and Young Persons Act, 1933, was rather remarkable in view of s. 1 (4) of that Act, and the Court of Criminal Appeal utilised its powers under s. 5 (2) of the Criminal Appeal Act, 1907, of substituting for the verdict found by the jury, a verdict of guilty of an offence under s. 1 (1) of the 1933 Act, a verdict which the jury could have found in accordance with s. 1 (4) of that Act, even if an additional count had not been included in the indictment.

The court thought it right to add that the case illustrated the difficulty which arose from an unnecessary multiplication of counts in an indictment for manslaughter, and then laid down the rule of practice that no other count should be added to an indictment for manslaughter.

Since the decision of the House of Lords in *Andrews* v. *Director of Public Prosecutions* [1937] A.C. 576, it has been clear law that a man might be guilty of driving at a speed or in a manner dangerous to the public, contrary to s. 11 of the Road Traffic Act, 1930, and yet not guilty of that reckless disregard for the life and safety of others which would amount to manslaughter. In other words, a person guilty of manslaughter, in the course of driving a car, would obviously be guilty also of an offence under s. 11 of the Road Traffic Act, 1930, but a person guilty under that section would not necessarily be guilty of manslaughter. If a person charged with manslaughter is acquitted he cannot subsequently plead *autrefois* acquit to a charge of dangerous driving: *R.* v. *Stringer* (above).

On the other hand, there are cases in which it has been held that a verdict of manslaughter was correctly returned where there has been merely a breach of a statutory prohibition. In *R.* v. *Senior* [1899] 1 Q.B. 283, a conviction of manslaughter was upheld where the appellant had neglected a child in a manner likely to cause injury to its health contrary to s. 1 of the Prevention of Cruelty to Children Act, 1894, s. 1. In the course of his summing up to the jury Wills, J., said: "If he has done anything which is expressly forbidden by statute and by so doing has caused or accelerated the child's death, he would be guilty of manslaughter, no matter what his motive or state of mind." Lord Russell of Killowen, C.J., held that that direction was substantially right. In *Reg* v. *Kempson*, 28 L.J. News. 477, a person was convicted of manslaughter of a person who died as a result of eating unsound meat sold by the prisoner.

The framing of separate indictments might therefore avoid confusion in some cases, as the court observed in *R.* v. *Stringer* (above), although in others there might be no justification for any confusion at all. On general principles, however, it would appear clearly right that a serious charge such as manslaughter should be considered separately from any other and lesser charges.

Money Paid under Mistake of Fact.

In a recent county court case (*Beida* v. *G. & J. Shaffer & Co., Ltd.*, at Willesden County Court on 8th February, 1939) an attempt was made to bring a peculiar but not unusual set of facts within the well-known doctrine propounded by Parke, B., in *Kelly* v. *Solari*, 9 M. & W. 58, that "where money is paid to another under the influence of a mistake, that is, upon the supposition that a specific fact is true which would entitle the other to the money, but which fact is untrue, an action will lie to recover it back, and it is against conscience to retain it."

The facts were that the defendants had let out a Vauxhall motor car under a hire-purchase agreement to G in January, 1937. In November, 1937, G purported to sell the car to the plaintiff, but did not disclose that it was subject to a hire-purchase agreement. In March, 1938, the plaintiff sold it to C., Ltd., and shortly afterwards C., Ltd., sold it to A. In October, 1938, A sold it to X, who sold it a few days later to Y.

On 16th November the defendant company had threatened G on several occasions to seize the car on account of arrears,

and had by then incurred expenses of about £16 in instructions to agents to seize the car. On that date G was in arrears with one payment and owed the defendant company a sum in respect of the insurance premium for which he was liable under the agreement. On that date the defendant company traced the car to C., Ltd., and in consequence of a threat to seize it, C., Ltd., promised to deliver it up to the defendant company in the course of the same day unless they heard to the contrary from the defendant company. C., Ltd., communicated with the plaintiff and informed him that the car was still comprised in a hire-purchase agreement, that the defendant company had threatened to seize it, and that he might be liable for the costs of a series of actions by subsequent purchasers of the car on the implied condition of title. The plaintiff telephoned the defendant company and later in the day called at their address and asked what he had been "let in for." The managing director of the company replied "£50." After some bargaining, during which the defendants' managing director said he had incurred expenses for searches, he drew a cheque for £50 to the order of the defendant company and received a receipt showing the sale of the car to him. The plaintiff agreed that nothing was said about the amounts unpaid under the agreement, but said that he was under the impression that they aggregated £50. On discovering later that only £11 6s. remained outstanding under the agreement he sued the defendant company for the difference between £50 and that sum, as money paid under a mistake of fact.

For the plaintiff, *Kelly* v. *Solari*, *supra*, and *Jones, Ltd.* v. *Waring & Gillow, Ltd.* [1926] A.C. 670, were cited, the latter being a case in which the plaintiffs had paid the defendants £5,000 as a result of the fraud of a third party, the plaintiffs honestly believing that they were paying the £5,000 as deposit under an agency agreement with the defendants as principals, and the defendants honestly believing that the money was being paid in order to discharge a debt owing to them by the fraudulent third party. The House of Lords held by a majority that the £5,000 was recoverable on the principle of *Kelly* v. *Solari*, *supra*. For the defendant it was contended that the same principle must apply as in rectification of an instrument, viz., that where the mistake is unilateral only, and the other party is not aware of nor has induced the mistake, rectification cannot be granted: *Bradford* v. *Romney*, 30 Beav. 431. It was also pointed out that the receipt made it clear to the plaintiff that there had been a sale, and if there had been any mistake at all, it was a mistake of law on the part of the plaintiff, who had apparently been led to believe that in view of *Belsize Motor Supply Co.* v. *Cox* [1914] 1 K.B. 244, and *Whiteley & Co., Ltd.* v. *Hilt* [1918] 2 K.B. 808, he was liable only for the amount remaining unpaid under the agreement. In fact, however, the agreement had been drawn so as to meet the difficulties created by those decisions.

The learned county court judge found as facts that the plaintiff thought that he was paying £50 for two unpaid instalments, and that the defendants did purport to sell the plaintiff the car for £50. As the facts did not come within the principle of *Kelly* v. *Solari*, *supra*, his honour dismissed the claim with costs.

The plaintiff in this case might well have been persuaded to pay £50 for the car, even if he had known that only £11 6s. was due under the agreement, as he was threatened with the liability for damages to a number of subsequent purchasers, and a possible liability for their costs. There was strong evidence that the desire to avoid this burden was the principal motive in his mind. The case was one of those difficult cases in which the plaintiff's mistake was one both of fact and law, and one solution of the problem seems to be that even if he had had the true facts explained to him he could not well have acted otherwise. In other words, the mistake was not material.

Another solution is to be found in *Morgan* v. *Ashcroft* [1938] 1 K.B. 49, where the Court of Appeal reviewed all the authorities and approved the statement of Bramwell, B., in *Aiken* v. *Short*, 1 H. & N. 210, 215, where he said: "In order to entitle a person to recover back money paid under a mistake of fact, the mistake must be as to a fact, which, if true, would make the person paying liable to pay the money; not where, if true, it would merely make it desirable that he should pay the money." It could not be said that the truth of the belief that £50 was outstanding under the hire-purchase agreement would necessarily have made the plaintiff liable to pay the defendant that amount, and therefore no part of the £50 could be recovered.

Company Law and Practice.

Rights of Shares defined by the Memorandum of Association.

At one time it was extremely common for the rights of the different classes of shares in the capital of a company to be prescribed by the memorandum of association, and many companies may still be found in which the rights attached to the share capital are so defined. In modern memoranda such a provision is regarded as undesirable, for it has long been considered, at any rate in this country, that the effect of such a provision is to put a class whose rights are so fixed into an exceptionally strong position, since the rights once unconditionally attached by the memorandum to a particular class of shares cannot be altered or infringed. Consequently if it is desired by the members of a company to alter any rights so fixed it has been the practice to proceed by way of a scheme of arrangement under s. 153 which requires the sanction of the court and consequently necessitates incurring the expense of a petition.

That section was first made applicable to arrangements with members by the Companies Act, 1900, and very many petitions under that section for the purpose of varying the rights attached by the memorandum have been presented since that date. Two examples of such petitions which have been reported are *Re Palace Hotel* [1912] 2 Ch. 438, and *Re J. A. Nordberg* [1915] 2 Ch. 439, and it is, I think, fair to say that it has been generally assumed that the method employed in those two cases is the only way in which rights attached to shares by the memorandum can be altered.

This view is based principally on the case of *Ashbury* v. *Watson*, 30 Ch. D. 376. In that case it was argued that conditions fixing the rights of shares contained in the memorandum could be varied by special resolutions altering the articles, on the ground that the prohibition contained in s. 12 of the Companies Act, 1862, against altering the conditions of the memorandum which is now to be found in s. 4 of the present Act, only applied to those conditions which the Act required to be specified in the memorandum, and that since the rights attached to the shares were not so required to be specified they could be altered in accordance with the articles of association.

In dealing with this contention Lord Esher, M.R., said: "... I prefer to look at the plain words of the statute and to construe them according to the ordinary rules of construction. Now what does the twelfth section of the statute say? After showing what things in the memorandum of association may be altered it says: 'Save as aforesaid and save as hereinafter provided in the case of a change of name no alteration shall be made by any company in the conditions contained in its memorandum of association' ... It does not say in the conditions hereinbefore mentioned or in the conditions necessary to the constitution of the company. It contains no limitation of any kind. To my mind it is a plain enactment that the company cannot alter anything in the memorandum of association which is a condition save what is expressly mentioned in that section."

In Fry, L.J.'s judgment it appears that he agreed with the Master of the Rolls, but he stated that no essential

condition of the constitution of the company contained in the memorandum could be altered. At the end of his judgment, however, he said this : " The Master of the Rolls has suggested to me that the language which I have used may be thought to import that no condition in a memorandum of association is essential unless it be required by s. 8 of the Act. By essential condition I mean that which in fact is part of the essence of the constitution of the company whether required by statute or not."

A recent Scots case shows that a different view may be taken of the position. In *Marshall Fleming & Co. Ltd.*, reported in [1938] Sc. L.T. 527, the memorandum of association fixed unconditionally the rights attached to the two classes of shares in the company, and the articles of association contained a modification of rights clause, which was part of the original articles of the company issued contemporaneously with the memorandum of association.

A petition was presented by the company for the confirmation of a reduction of capital, and for a scheme of arrangement to be sanctioned, the terms of which varied the rights attached to the shares by the memorandum of association. If a scheme of arrangement was necessary for such a purpose the company could not have succeeded as it had not adopted the proper procedure and would have to start all over again.

On this question Lord Keith held that he was bound to follow a previous Scots case, *Oban & Aultmore-Glenlivet Distilleries Ltd.* [1903] 5.F. 1140, where the court had held that a power to modify rights which was contained in the original articles of the company might be exercised without recourse to the court, notwithstanding that the rights proposed to be modified were prescribed in the memorandum of association. Having so held, he goes on to say : " I have considered, however, the provisions of the statute and a number of the English cases, and I think that independently of the *Oban Case* I might have arrived at the same result."

He then went on to deal with certain English cases bearing upon this topic to which I now briefly refer.

In *Hutton* v. *Scarborough Cliff Hotel Co.*, 2 Drew & Sm. 521, it was held that a company could not by altering its articles issue preference shares when the memorandum of association divided the capital of the Company into so many shares of a certain value but without dividing it into different classes of shares, or in other words it was held to be a condition of the memorandum and consequently unalterable that the capital should be all of one class. In regard to this case Lord Keith remarks, very probably correctly, that it was because of this decision that the practice crept in of specifying in the memorandum the different classes of shares into which the capital was to be divided, a practice which, as we shall see, is no longer necessary, and which, as I mentioned above, is now regarded as undesirable.

The next case to which he refers is *Harrison* v. *Mexican Railway Co.*, L.R. 19 Eq. 358, which was a decision of Sir G. Jessell, M.R., who held, treating *Hutton's Case* as binding on him, that if the memorandum and articles of association of a company are silent on the subject in that case, it is an implied condition that the shareholders are entitled to rank equally as regards dividend without preference or priority between themselves : but that such an implication would be rebutted if the articles of association contemporaneous with the memorandum contain clear provisions as to the preference or priority of classes of shares.

The next case referred to by Lord Keith was *Ashbury* v. *Watson*, and in dealing with that case he pointed out that nothing was there said as to the effect of contemporaneous articles authorising an alteration of capital rights laid down in the memorandum, but the reasoning of the judgments of the court would seem to suggest that even contemporaneous articles could not validly authorise any change in rights specified in the memorandum.

As we have already seen, the judgments certainly seem to suggest that that is the case and, in fact, they would seem to be conclusive that it is so. The question was decided in that case on the construction of the Act and it would appear to be impossible to say that the very plain language of the judgments laying down the principle that a condition of the company's constitution, contained in the memorandum, cannot be altered did not extend to a case where there was a power of modification contained in contemporaneous articles. It is equally plain from that case that the definition of rights of certain classes of a company's shares is a condition of its constitution. When it is contained in the memorandum and if that is the case no provision, even in contemporaneous articles, could affect the position.

There are several other cases on this question which were referred to by Lord Keith in the case above referred to and those I propose to refer to next week. At the present moment we are, however, in a position to assert that at the date of *Ashbury* v. *Watson* the following propositions were established by the English cases :—

(1) If the memorandum determined the rights of special classes of shares, those rights were unalterable.

(2) If the memorandum and articles were silent as to the rights to be attached to the shares, they all ranked *pari passu* for all purposes.

(3) If the memorandum was silent as to the rights of shares, but the contemporaneous articles defined the rights of special classes of shares, such rights were validly attached to the shares.

It should be borne in mind, however, that these propositions do not represent the present position of the law, but as I shall show next week, it has undergone a certain amount of subsequent modification.

A Conveyancer's Diary.

I HAVE recently had to consider the question regarding the rights as between capital and income to arrears of cumulative dividends in a company and some allied questions, and found the authorities interesting reading.

The Right to Arrears of Cumulative Dividends as Between Capital and Income.

In re Walkley [1920] 2 Ch. 205, a testator specifically bequeathed cumulative preference shares in a company to his son R, and settled his residuary estate upon trust for all his children. At his death in 1905 the dividends on the shares were in arrear and it was not until 1907 that there were any profits available for dividend. In that year an interim dividend was declared sufficient in amount to satisfy all the arrears upon the preference shares.

The question was whether the interim dividend declared in 1907 ought to be apportioned so that the arrears accrued at the date of the testator's death would form part of his residuary estate or belonged to R.

It was held that the dividend declared in 1907 must be treated as being in respect of that year only ; that the Apportionment Act did not apply ; and consequently that the whole of the dividend belonged to R.

Another case is *Re Marjoribanks* [1923] 1 Ch. 307.

By her will a testatrix bequeathed her residuary estate to her trustee upon trust for sale and conversion, with power to postpone and directed him to pay the income or annual produce to D for life and to apply the net annual produce from the unconverted part of her estate as if it were income of the proceeds of sale.

The testatrix owned 2,450 fully paid cumulative preference shares in a company, and under the articles was entitled to be paid out of available profits a cumulative preference dividend of 10s. per share in addition to a sum of £7 per share. At the death of the testatrix in 1920 there was due to her on

balance a sum of £3 15s. per share in respect of the £7. The right to that balance was contingent on the company making a profit and not carrying it to reserve. In 1922 the directors passed a resolution "to transfer £80,000 from reserve to profit and loss account and to declare and pay a dividend of £1 17s. 6d. on the preference shares, being the equivalent of three and three-quarters years' dividend on account of arrears." In pursuance of that resolution £3,150 was paid to the executors of the testatrix.

It was held that on the contingency happening the shareholder then entitled to the shares was entitled to the money which was the equivalent of the right which was once contingent, but then became absolute, and that the £3,150 was income which became payable for the first time in 1922 and passed to the tenant for life under the terms of the will as "annual produce" of the estate.

The most recent case is *Re Sandbach* [1933] 1 Ch. 505, which raised a somewhat different point, namely, as to the rights where a company issued funded dividend certificates redeemable out of future profits.

By his will, Sandbach, after bequeathing legacies, bequeathed all the residue of his personal estate to trustees upon trust for conversion, with power to postpone, and after providing for the legacies to invest the residue and to stand possessed thereof and the income thereof for his children, being male at twenty-four, or being female at that age or earlier marriage. The income of the share of any child who had not attained a vested interest was directed to be paid to the testator's wife until such child should attain a vested interest. By a codicil the testator declared that his trustees should stand possessed of his residuary estate upon trust to pay the income thereof to his wife during widowhood, and declared that such trusts should take priority to the trusts declared in his will concerning his residuary estate, and after the death or re-marriage of his wife his trustees should stand possessed of his residuary estate upon the trusts declared in his will.

The testator died in 1915, leaving his widow surviving and three children, P.D.S. (a son), who was born in 1917; R.M.S. (a son), born in 1909, and M.P.S. (a daughter), born in 1916.

The testator's widow married again in 1917, and became Mrs. Douglas.

At the date of his death the testator was possessed of 500 5½ per cent. cumulative preference shares in a brewery company, which were retained by the trustees under the power contained in the will. No dividend had been paid on those shares since 1900. In 1919 a sum of £97 19s. 5d. was paid as dividend for the year ending 31st December, 1918, out of the profits for that year. In 1920 a sum of £96 5s. was paid as dividend for the year ending 31st December, 1919, out of profits of that year. The trustees appropriated those sums to capital thinking that the dividends should be treated as for the years 1901 and 1902.

In 1920 the company put forward a scheme which was ultimately approved by the court. The scheme provided that "The cumulative preferential dividend at the rate of 5½ per cent. per annum upon the preference shares shall in future be calculated as if such dividend had been paid in full down to 31st December, 1919, and the company shall keep a separate register of the arrears of such dividend down to 31st December, 1919, which amount of dividends for 17½ years (therein called the 'funded dividend') and such arrears shall be capable of being transferred apart from the shares to which the same relate and shall be paid or satisfied in the manner provided in the subsequent provisions of the scheme." The scheme provided for the issue to holders of the funded dividends of certificates for the amounts to which they were entitled and also provided that the profits of each year might after making certain payments be applied in accepting tenders for the funded dividend certificates at a discount.

In pursuance of the scheme the trustees received a certificate for £2,371 funded dividend. The trustees apportioned that amount on the basis that it was for arrears of dividend for the 17½ years and gave a funded dividend certificate for £603 to Mrs. Douglas as income and retained certificates for £1,768 as capital.

Mrs. Douglas sold her funded dividend certificates for £298 9s. 8d., and the trustees tendered the certificates which they retained for redemption and received £1,050 15s. for them from the company.

The question was whether those sums were capital or income or ought to be apportioned.

It was contended that the material date was the date of the redemption of the certificates, and the money received on redemption should go to the persons entitled to the income at that date. If that had been so the testator's elder son would have been entitled to a share of it as he had attained twenty-four years of age. Farwell, J., did not take that view. His lordship said that the funded dividend certificates were in the nature of debentures charged upon profits available for distribution. The learned judge added: "On principle I can see no difference between these funded dividend bonds which are given by the company in discharge of their obligation to pay the arrears of dividend at some future date and the giving of shares in another company to the shareholder in similar discharge."

Therefore the person entitled to the redemption money was the person entitled to the income when the certificates were issued, i.e., the widow, and not the persons so entitled when redemption actually took place.

Landlord and Tenant Notebook.

Controversies about the Action for Waste.

A LANDLORD had, originally, no action against his tenant for damage to the reversion unless the lease so provided. Just as, in *Paradine* v. *Jane*, and other cases (referred to in the "Notebook" when dealing with war damage, p. 128 of the current volume) tenants have to go on paying rent though the premises are destroyed, because they should have thought about that possibility when negotiating their leases—so the landlord had, at common law, no remedy against the tenant who maltreated the property: "because," as it was put in the *Countess of Shrewsbury's Case* (1600), 5 Co. 13b, "it was his folly to make such a lease and not restrain him by covenant, condition or otherwise, that he should not do waste." Parliament now proposes to assist the neglectful tenant in the way and to the extent mentioned in the article referred to; but landlords have been saved from the consequences of their folly since 1267, when c. 2 of 52 Hen. III (the Statute of Marlebridge) made tenants liable for waste made during their terms, unless it was authorised.

Since which, we have had conflicts of authority and opinion on various points. These include: whether the offence is a tort or a breach of contract; whether a landlord can sue in the alternative for waste or breach of covenant to repair; whether the statute applies to permissive as well as to commissive waste.

The first two of these problems are, I think, interconnected in that if the one were solved the other would solve itself; but they have never been tackled together.

Taking the question of breach of contract or tort first (it is the one on which we have the most recent authority), there is nothing startling, nowadays, in the proposition that an Act of Parliament can import terms into a contract which the parties had never thought of; quite early in the history of housing legislation, *Walker* v. *Hobbs & Co.* (1889), 23 Q.B.D. 458, showed that what is now s. 1 of the Housing Act, 1936, gave tenants contractual rights against their landlords. In

the earlier days of legal history, the distinction between actions of assumpsit and actions on the case was not sharply defined (at the time of the Statute of Marlebridge, neither was, in fact, known). But it is clear that in *Kinlyside* v. *Thornton* (1776), 2 W. Bl. 1111, when the landlord of a tavern sued assignees of the lease for removing fixtures, doors, etc., De Grey, C.J., treated the action, brought for waste, as something different from an action for breach of contract. For the lease contained repairing covenants, and these were not sued on. The objection was raised that they excluded the other remedy. The judgment includes: "Had the lease no deed of covenant, the action of waste, or case in the nature of waste, would have lain. Because the landlord by this special covenant acquires a new remedy, does he lose the old?"

The next case in point is *Harris* v. *Mantle* (1789), 3 T.R. 307, when it was held that a landlord, suing for breach of implied covenant to use a farm in a husbandlike manner, but including in his declaration "but has committed waste," was held not entitled to give evidence of anything not amounting to commissive waste. His misfortune was, no doubt, due to defective pleading: but note that no one suggested that waste was not a breach of implied contract.

Again, in *Jones* v. *Hill* (1817), 7 Taunt. 393, a landlord suing for waste cited an express covenant to yield premises up at the end of a lease in a condition equal to that into which they had been put by someone else at its commencement. It was held that this could not be waste; but not that waste was not a breach of contract.

Marker v. *Kenrick* (1853), 13 C.B. 188, was on all fours with *Kinlyside* v. *Thornton*, *supra*; and it was some time after that that Lord Esher, M.R., uttered, in *Whitham* v. *Kershaw* (1885), 16 Q.B.D. 613, C.A., the phrase "the implied covenant in this lease not to commit waste."

Up to this point it might seem that in view of modern facilities for amending pleadings, we have been dealing with a purely academic point. But *Defries* v. *Milne* [1913] 1 Ch. 98, C.A., showed that the answer to the question "tort or breach of contract?" could affect rights as well as remedies. . . .

The facts were that the defendant took a lease as trustee for a company, which entered and constructed, for the purposes of its business, a roadway paved partly with iron plates. During the currency of the term the company went into liquidation and sold its property, other than its interest in the premises, to the defendant. Under the agreement for sale he was given possession of the premises for a few months, to enable him to remove machinery and plant, and he undertook to observe the conditions of the lease (except as regards rent) and to make good any damage done in removing fixtures. When he left the plaintiff was let into possession, and the company released to him all such interest "as it might have" in the premises, the agreement specifically purporting to assign the benefit of the agreement by which the defendant had bought its property. The defendant had torn up the iron plates and the plaintiff sued as assignee for the waste so committed.

It was held that Lord Esher's *dictum* in *Whitham* v. *Kershaw* erred in describing waste as a breach of implied contract; from *Kinlyside* v. *Thornton* and *Marker* v. *Kenrick* it was apparent that it was a tort. Consequently the right of action, if any, could not be validly assigned.

No reference was made to *Harris* v. *Mantle* and *Jones* v. *Hill*, which, as we have seen, proceeded on the basis that there was an implied covenant against waste. There is, indeed, no reason why every authority should be introduced, but what is of interest is that Farwell, L.J. (who alone mentioned authorities), cited these passages from *Marker* v. *Kenrick*, contained in the judgment of Jervis, C.J.: "The case of *Kinlyside* v. *Thornton* decided expressly that a lessor may sue for waste . . . although the lease contains a covenant upon which the lessor might maintain an action for the same wrong. . . It is no answer for the lessee to say that covenant may also be maintained."

This brings us to the second question. Farwell, L.J.'s judgment is clearly based on the view that waste is one thing, breach of covenant another. In formulating that view his lordship cited authorities which laid it down that in apt circumstances a landlord might choose his remedy. If this right of election were an essential part of the reasoning, it is of interest to note that in the already cited *Jones* v. *Hill*, *supra* (which was decided after *Kinlyside* v. *Thornton*, but before *Marker* v. *Kenrick*) the judgment of Gibbs, J., included: ". . . but it is impossible that it should be waste, to omit to put the premises into such repair as A.B. should put them into. Waste can only lie for that which would be waste *if there were no stipulation respecting it*."

Thus, the two latest authorities differ on the question whether the two remedies are mutually exclusive, and if Farwell, L.J.'s opinion that waste was a tort depended on an acceptance of the proposition that *either* remedy might be available to a landlord when the lease contained a tenant's covenant to repair, it is inconsistent with *Jones* v. *Hill*.

Apart from the question of assignability of rights of action, there is another way in which the question might come to be raised, having regard to the present state of authorities on the third question, which was that of liability for permissive waste. The controversy in this case was due to the use of the word "*faciant*" in the Statute of Marlebridge ("*vastum, vendicionem seu exilium non faciant*"). In the Institutes (Book II, 145) Coke said permissive waste was included, but added as a reason "he that suffereth a house to decay, which he ought to repaire, doth the waste." This takes us no further. If "which he ought to repaire" means "by his lease," the statute would be unnecessary; if not, the argument begs the question. So it is not surprising that *Davies* v. *Davies* (1888), 36 W.R. 399; 38 Ch. D. 499, in which it was held that tenants for years were so liable, was closely followed by *Avis* v. *Newman* (1889), 41 Ch. D. 532, to the opposite effect (for while waste during a tenancy for life was the subject-matter in this, the statute applies to both). Hence if, say, the landlord under a lease for years undertook responsibility for certain repairs and the tenant, not being particular or disliking the discomfort attendant on work being done on the premises, neither called upon the landlord to do any nor did any himself, and consequently the reversion suffered, it would be difficult to say whether an action for waste would lie; it being assumed that a lessor's covenant would be a "stipulation concerning it" covered by the judgment in *Jones* v. *Hill*.

Our County Court Letter.

INJURY TO RAILWAY PASSENGER.

In a recent case at Birmingham County Court (*Roe* v. *London Midland & Scottish Railway Company*) the claim was for £100 as damages for negligence and £55 special damage. The plaintiff's case was that in June, 1938, he was travelling with his wife and son on a Sunday excursion to Skegness. Owing to a draught, an attempt was made to shut the window. The plaintiff's wife and son both failed to do so, although the lock was pulled to the "free" position. The plaintiff then tried, by using the finger lifts set in the glass, whereupon the window splintered. An artery and guides of the plaintiff's left hand were cut, although he and his son were merely trying to lift the window by the finger catches in the normal way. If the defendants failed to provide proper equipment, they had been negligent. The defendants' case was that the coach was examined before the accident, and the window was in order. After the accident the fittings were intact, with the finger lifts still attached to the glass. Uneven pressure by two people might have broken the glass, but if an obstruction was suspected (although mistakenly) the plaintiff should have called the guard, instead of trying to apply his own remedy by forcing the window. His Honour Judge Dale observed

that a quarter-inch plate glass window did not break without severe pressure. Even assuming (against the weight of evidence) that the window had stuck, it had possibly been banged with the wrist, resulting in cuts. There was no evidence that the window was wrongly constructed, and the cause of the accident was a mystery, unless it was excessive pressure. In the absence of negligence, judgment was given for the defendants, who did not ask for costs.

SEASIDE ACCOMMODATION.

In a recent case at Yarmouth County Court (*Savile* v. *Glover*) the claim was for £10 18s. 6d. as damages for breach of contract to take rooms. The counter-claim was for £3 13s. 6d., being the excess cost of other accommodation over that booked. The plaintiff was a boarding-house keeper at Gorleston, and her case was that the defendant had booked apartments, with board, for five adults and two children for £15 4s. 2d. The party arrived, but went out between tea and dinner-time. At 8 p.m. they said they had found other rooms, where they would get a five-course dinner. The plaintiff's advertisement in the guide was substantially true, as the distance from her house to the marine parade was 150 paces. The defendant's case was that he entered into the contract by letter, on the faith of the advertisement, of the plaintiff's house, viz.: "Situated on the cliffs, one minute from the sea, pier, tennis courts, station and garage. Close to golf links. Excellent cuisine. Baths, h. and c." This was a misrepresentation, as it took five minutes to walk to the sea, and the golf links were 1½ miles away. Tea was served by the plaintiff's daughter, in shorts, and there was a scanty supply of bread and butter, but no cake. Jam was supplied on request. Dinner was late, the pork was fat and underdone, one small potato was supplied per person and the cabbage was not cooked enough. The bathroom was under repair, and not in use, and hot water had to be asked for specially. On finding other accommodation the defendant offered to pay 30s. per room. His Honour Judge Rowlands held that the representation in the advertisement put things too rosily and was not strictly accurate. The party might have complained about the food, and asked for more, but no opportunity was given to the plaintiff of meeting their requirements. No complaint was made until the defendant had found other accommodation, and there was, therefore, a breach of contract. Judgment was given for the plaintiff for £10 and costs, the counter-claim being dismissed.

MISREPRESENTATION ON SALE OF BUSINESS.

In *Dawkins* v. *Deacon*, recently heard at Leicester County Court, the claim was for rescission of a contract for the sale of a grocery and general stores, including a newspaper department. The plaintiff's case was that he saw an advertisement of the Central Stores, Queniborough, and got into touch with Business Services, the agent for the vendor. At an interview, the defendant (the vendor) said that the takings were £30 a week, and he could guarantee £25. Although no proper books were kept, the defendant produced a small book purporting to contain about eight weeks' takings. Some of the weeks only showed £12 to £14, but the defendant explained that this was when his wife was ill. A representative of Business Services stated that, if the plaintiff paid a deposit of £30, this would be returned if the takings did not amount to £30 a week. On this assurance, the plaintiff paid £10 in cash and £20 by means of a promissory note to Business Services. On inquiry from suppliers of goods, however, it transpired that in fifteen months the total value of goods supplied to the business was only £660. Even on a generous margin of profit, it was clear that the takings could not amount to £25 weekly. The defendant contended that any claim must be against Business Services. His Honour Judge Galbraith, K.C., gave judgment for the plaintiff for £30 and costs, payable in seven days, and ordered rescission of the contract for the sale of the business.

Reviews.

The British Cabinet System, 1830–1938. By Arthur Berriedale Keith, D.C.L., LL.D., D.Litt., F.B.A., of the Inner Temple, Barrister-at-Law, and Advocate of the Scottish Bar. 1939. Demy 8vo. pp. xi and (with Index) 648. London: Stevens & Sons, Ltd. 1939. 15s. net.

This new volume from the prolific pen of Professor Berriedale Keith may be described as a fitting crown to the copious literature devoted to the subject of constitutional law which he has given us within the last two or three years. It is a fascinating volume, full not only of legal but also of human interest, made so in the discussion of many of the topics coming within his scope by references to the numerous memoirs of deceased statesmen who played a notable rôle in the nation's history during the years with which the work is concerned. After dealing with the development of Cabinet government, the formation and dissolution of the Cabinet, the Prime Minister and his colleagues, each Department of State is taken in order and its functions explained. This is a very useful section. Then comes the relationship of the Cabinet and Parliament, the limitation of Cabinet authority, and the Cabinet and the Crown. Special attention is drawn to the influence exercised by Queen Victoria during her long reign. It is noted that she was usually more sympathetic towards the Conservatives than to the Liberals, and, as we suppose is the case with most people, she liked her own way; but despite this little foible there is no gainsaying the fact that she was a great ruler, ever striving after that which was best for the nation, as indeed has been the case with her successors, except, in the opinion of the author, King Edward VIII, as to whom he says that he "had not much taste for the steady performance of business, which marked his father." The author is always outspoken in his views, and these may not invariably be accepted; we particularly refer to his final chapter; but even if readers sometimes find themselves in disagreement with his conclusions, they will find consolation every now and again by some piquant comment, such as that called forth in the treatment of the office of Poet Laureate, where we read that King Edward VII "called attention to the trash Mr. Austin wrote. Mr. Robert Bridges, in 1913, was preferred to Mr. Hardy or Mr. Kipling, and his refined and scholarly poetry did something to rehabilitate the office, but Mr. Masefield's poem on the death of George V renews the doubt whether the office ought to be sustained"; or this footnote on p. 539 which tells us that "Mr. Justice Darling's was a purely political appointment, but he was far from incompetent." On p. 529, is not "Dr. Norman Maclean" a misprint for "Dr. Norman Macleod," the trusted adviser of Queen Victoria in Scottish ecclesiastical affairs? Again, readers might well conclude that the statement on p. 542 that the Queen "consented to give a peerage to Sir A. Cockburn in 1865 only because it had been promised, though without her authority, but asserted her duty of securing that peerages should be given only to people of good moral character," involved that the peerage was actually conferred. This was not the case, although the Chief Justice received a G.C.B. These, however, are small slips, and we can cordially commend the volume as an excellent and extremely readable manual.

The Churchman's Handbook: Everyman's Guide to the Church. 1938. Crown 8vo. pp. (with Index) 158. London: The Press and Publications Board of the Church Assembly. 1s. net.

This little book contains a greater variety of information about every aspect of the life of the Church of England than one would think possible in 150 pages. The articles from the pens of many notable churchmen are not haphazard productions, but each contributes to an essential unity of structure, many styles blending as in one of the old cathedrals. There are some excellent contributions treating of the legal aspects of church life.

To-day and Yesterday.

LEGAL CALENDAR.

27 MARCH.—On the 27th March, 1760, Sir Robert Henley, Lord Keeper, was raised to the peerage as Lord Henley, Baron of Grange.

28 MARCH.—When Joseph Jefferies, a prosperous old butcher, retired from business to live in rural Walthamstow, he took his twenty-five year old niece Elisabeth to live with him and keep house. Unfortunately for him, she fell in love with John Swan, the gardener, and the two young people, thinking they could deal with his fortune better than he, decided to kill him. One night Swan shot him dead in bed. The two culprits were hanged on the 28th March, 1752. On the way from Chelmsford Gaol to the gallows at Walthamstow, Elisabeth fainted several times. So great was the crowd, some of whom had paid exorbitant prices for places that the Sheriff decided not to execute her there, but on the gallows prepared for Swan in Epping Forest, and there they were hanged together.

29 MARCH.—Elections were taken seriously in 1832, and the Clitheroe contest in that year was among the most lively. When the Tory candidate arrived with his supporters a large mob assailed him as "a damned old boroughmonger and a slave driver." The people spat in the carriages, and tried to overturn them, struck the horses and threw stones. The only constable in the town was unequal to the situation, and fifty hussars who were sent for restored order by wounding eleven people. On the 29th March, 1833, a group of the rioters were tried at Lancaster, but they were all acquitted, some on alibis and one on a plea that he had only pushed a horseman because the horse trod on his toe.

30 MARCH.—On the 30th March, 1683, Francis Bramston, the third son of Chief Justice Bramston, and himself a former Baron of the Exchequer, was buried in Roxwell Church, Essex, as near his father as could conveniently be done. "He had a good measure of knowledge in the civil law and in school divinity, an excellent historian and thoroughly studied in the common law, which he made his profession, but hunted not after business neither trucking with attorneys nor fawning on or flattering great men."

31 MARCH.—Highway robbery was apt to be something of a spare time occupation for the respectable in the eighteenth century. Thus, when a distress for rent was levied on the goods of one Davis, a tallow chandler of Carnaby Market, who had till then enjoyed an unblemished character, there were found in his desk a pistol besides banknotes and bills of exchange which the Post Office officials identified as the proceeds of several mail robberies. It appeared that he had been in that line of business for over three years, carrying his enterprise so far afield as the Chester Mail and the Cirencester Mail. He was hanged in chains on the 31st March, 1755, at Gerrard's Cross, the scene of the exploit for which he was convicted.

1 APRIL.—On the 1st April, 1785, two convicts in Newgate Gaol cut a hole in the floor of their cell and went through, only to find themselves in the common sewer. Newgate itself was unhealthy enough in those days, but they were certainly out of the frying pan into the fire. After wading about till they were nearly suffocated, they found a gully hole at last and called for help. They were finally pulled out too weak to walk and taken back to their former quarters, having only succeeded in making April Fools of themselves.

2 APRIL.—On the 2nd April, 1830, Richard Lambrecht, the surviving principal in a duel fought at half-past six one January morning behind the Red House at Battersea, was tried for murder, together with the two seconds, before Mr. Justice Bayley, at the Kingston Assizes. Before he expired, the dead man had had time to send for a clergyman of the Church of England and ask that there should be no prosecution. By 1830, duelling was declining, but there was life in it yet, and, despite the judge's clear direction, the jury after a retirement of three hours and a half acquitted the accused.

THE WEEK'S PERSONALITY.

The moral of Sir Robert Henley's entrance into the peerage is that everything comes to him who waits. After Lord Hardwicke's tenure of the Great Seal there had been some difficulty in finding a successor. Lord Mansfield, Sir Thomas Clarke, and Chief Justice Willes had all declined, and so it was offered to Henley, but newly appointed Attorney-General, who was able enough, though not to the point of brilliance, and in a negative sort of way acceptable to most of the political factions. The king, however, disliked the appointment and made it clear that he would not honour him with a peerage. Henley, nevertheless, eagerly accepted the advancement without making terms—wisely enough, for it was through holding out for a title that Willes, C.J., had just missed the tide, his refusal of the Woolsack having been only a tactical one. For three years Henley presided in the Lords as a commoner and then, as if for his special benefit, an unbalanced peer murdered his steward and had to be tried. It was thought improper that the Lord High Steward on such an occasion should not be one ennobled, so at last Henley attained his coronet. Four years later, having meanwhile become Lord Chancellor on the death of George II, he was created Earl of Northington. He was the last Lord Keeper.

YOUTH IN YEARS.

At the Lewes Assizes lately Mr. Justice Charles has been showing himself conscious of his years, but not depressed by them. "A mere child compared with me," he observed, when a lady in one case gave her age as sixty-three. In another case in which the age of one of the parties was given as fifty-seven, he said: "I am more than ten years older than that and I feel quite young." Time's winged chariot seems to trouble judges rather less than most men. They rarely fall into that melancholy mood which once, temporarily attacking Chief Justice "Pether" O'Brien, caused him to describe himself as "an extinct volcano." Mr. Justice Charles would certainly endorse the *dictum* of the Victorian judge dealing in his summing up with evidence of a young lady who had said that she thought a man was getting old at sixty-five. "Why, gentlemen," he said, "I'm sixty-five and I declare to you I am a perfect chicken." One recalls too the observation of Mr. Baron Dowse to a juror who had asked to be excused on the ground of age: "You may go your way, but were you a judge you would be only in the prime of life."

NO DECAY.

Curiously enough age seems to affect the working efficiency of judges less than that of most men. Thus, old Vice-Chancellor Chatterton worked on in Dublin without making the profession uncomfortably conscious of his years. In fact, a counsel in an action to set aside a settlement once said to him: "The settlor, my lord, had attained the great age of seventy-eight years and had, therefore, reached that time of life when not only are the physical activities impaired, but, as we all know, the mental faculties are clouded by decay." "I reached the age of seventy-eight myself last week," said Chatterton. It was at that age that Lord Campbell after a life spent in the Common Law Courts became Lord Chancellor and made quite a successful equity judge. Outside the legal profession it would be hard to find one to utter the words of a venerable Canadian Chief Justice on his ninetieth birthday: "I am still at work with my hand to the plough and my face to the future. The shadows of evening lengthen about me, but morning is in my heart. The best of life is always further on."

Notes of Cases.

Judicial Committee of the Privy Council.

Canadian Celanese Limited *v.* The B.V.D. Company, Limited.

Lord Thankerton, Lord Russell of Killowen, Lord Macmillan, Lord Wright and Lord Romer.

23rd January, 1939.

CANADA—PATENT—DECLARED INVALID BECAUSE CLAIMS TOO WIDE—DISCLAIMER AFTER JUDGMENT BUT BEFORE FORMAL ORDER—EFFECT.

Appeal from a decision of the Supreme Court of Canada

The appellants were assignees of Canadian letters patent No. 265,960 granted in November, 1926, to one Dreyfus concerning an alleged invention of "improvements relating to fabrics and sheet materials and the manufacture thereof." The specification contained twenty-five claims, of which the first twenty-four were process claims and the twenty-fifth covered the product. The claims were all of excessive breadth. The respondents carried on business as shirt dealers, selling collars and shirts with attached collars which the appellants alleged to be infringements of their letters patent. The respondents began an action against the appellants claiming (A) a declaration that their goods "do not constitute an infringement of any exclusive property or privilege defined by patents Nos. 265,960 and 311,185 or either of them," and (B) a declaration "that any claims of either of the said patents which define any exclusive right or privilege which would be infringed by the manufacture by the plaintiff of the collars or shirts with attached collars are invalid and void." On the trial of the action in the Exchequer Court the letters patent were declared valid and to have been infringed, and the action was dismissed. The respondents appealed, and the Supreme Court on the 19th March, 1937, ordered patent No. 265,960 to be declared invalid, on the ground that the claims upon their true construction were too broad and embraced more than the alleged invention disclosed in the body of the specification, and had been anticipated by certain earlier patents. After the Supreme Court's judgment had been pronounced, but before the formal order had been settled, the appellants filed a disclaimer under s. 50 of the Patent Act, 1935. By s. 50 (3) "No disclaimer shall affect any action pending at the time when it is made, except as to unreasonable neglect or delay in making it" The disclaimer stated *inter alia* that the "specification had been made too broad, asserting a claim to more than that of which Camille Dreyfus was the inventor." The appellants then presented a petition to the Supreme Court "to order the rehearing of the present appeal in order to meet the new conditions that have arisen since the delivery of the judgment." That application was dismissed on the grounds of justice and convenience. The appellants now appealed to His Majesty in Council from both orders of the Supreme Court, asking that both orders should be reversed, and that it should be declared that the letters patent were valid and had been infringed, the declaration of validity being made either upon the footing that the limited construction of the unamended claims, which was adopted by the trial judge, was correct, or upon the footing that effect should be given to the disclaimer. *Cur. adv. vult.*

LORD RUSSELL OF KILLOWEN, delivering the judgment of the Board, said that with regard to the order of the 1st June, 1937, the question whether the Supreme Court should or should not permit the re-argument of an appeal already decided by its reasoned judgment was a matter which the court was entitled to decide in the exercise of its discretion, and their lordships must decline to advise any interference with that discretion. With regard to the order of the 19th March, 1937, their lordships agreed with the Supreme Court that, if there had been no disclaimer, the patent would be invalid and void. The disclaimer must under the Act necessarily be unconditional. As soon as it was recorded it was made part of the patent, the only existing claims being those as amended by virtue of the disclaimer. The appellants sought to pray in aid s. 50 (3) of the Patent Act, 1935, and claimed that that sub-section enabled them to obtain the same measure of relief or success in the respondents' action as they would have obtained if the claims had been originally confined to the narrower limits which resulted from the disclaimer. The sub-section, more particularly in regard to its words of exception, appeared difficult to construe with confidence, but the words "no disclaimer shall affect any action pending at the time when it is made," must at least have the effect that the rights and liabilities of the parties to a pending action were to be ascertained and declared on the footing that the person who disclaimed obtained no advantage in the action from his disclaimer. On that view the sub-section could be of no assistance to the appellants. The appeal must be dismissed.

COUNSEL: *Sir Walter Monckton*, K.C., *E. J. C. Neep*, and *C. G. Bonard*, for the plaintiffs: *R. S. Smart*, K.C., and *C. Robinson*, for the defendants.

SOLICITORS: *Faithfull, Owen & Fraser; Lawrence Jones and Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

United Towns Electric Company Limited *v.* His Majesty's Attorney-General.

Lord Atkin, Lord Thankerton, Lord Russell of Killowen Lord Wright and Lord Porter,

27th January, 1939.

NEWFOUNDLAND—REVENUE—INCOME TAX—PUBLIC UTILITY COMPANY—UNDERTAKING EXEMPTED BY STATUTES FROM "TAXES" AND "TAXATION"—WHETHER NATIONAL AS WELL AS LOCAL TAXATION INCLUDED.

Appeal by leave of the Supreme Court of Newfoundland from a judgment of that court, dated the 1st May, 1937, which confirmed assessments to income tax made on the appellants, United Towns Electric Co. Ltd., for the years 1929 to 1934, inclusive, in respect of all their undertakings.

The company were incorporated in 1902 under a public Act of 1902 for the purpose of supplying electricity to certain towns. Section 30 of the Act contained the following exempting provision: "The company shall be liable for water rates on all lands and buildings owned by it in the aforesaid towns, but otherwise the company shall be exempt from taxation." Under s. 36 the Act was to be deemed a public Act, and the enterprise was admittedly one of public utility. In 1913, the Conception Bay Electric Co. were incorporated under an Act of that year for the purpose of supplying electricity to certain other towns and villages. Section 21 of the Act of 1913 provided: "The Company shall be exempted from all rates, taxes and assessments for the period of fifty years from the date of the passage of this Act." By two amending Acts of 1914, respectively, the Conception Bay Company were authorised to dispose of their undertaking and the appellant company to take it over. By an Act of 1924, the appellants were empowered to extend their operations to certain other districts of Newfoundland. The respondent admitted that that undertaking would be ruled by the decision on the Act of 1902. In 1929 the appellants were authorised by an Act of that year to operate, *inter alia*, an electric light and power system which a previous company had failed to do. Section 10 of the Act of 1929 provided that: "the electric light and power system . . . operated . . . by the" appellants "under the . . . Act shall be exempted from all taxes . . . for . . . ten years . . ." The assessments in question covered the profits of the operations carried on by the appellants under the Acts of 1902, 1924 and 1929, and of the undertaking acquired by the appellants from the Conception Bay Company, whose powers

rested on the Act of 1913. The respondent contended that the decision of the Supreme Court that the term "taxation," as used in s. 30 of the Act of 1902 and s. 10 of the Act of 1929, must refer to local taxation only and could not include income tax, was correct. *Cur. adv. vult.*

LORD THANKERTON, delivering the judgment of the Board, said that the Supreme Court appeared to have based their decision on the terms of s. 30 of the Act of 1902, which they held to show that the term "taxation" was limited to taxes *ejusdem generis* with water rates, which were excepted in the earlier part of the sentence, and were payable by Statute to water companies and formed no part of the revenue of the colony: that the Act of 1902 was local in its object and the work it authorised, and the water rates referred to concerned a particular locality; and that, accordingly, the immunity was limited to further taxation of a local character similar to the water rates specially named. They held that s. 10 of the Act of 1929 must be similarly construed. Their Lordships were unable to agree with that reasoning. In their opinion, there was no room for the application of the principle of *ejusdem generis* in the absence of any mention of a genus, since the mention of a single species, e.g., water rates, did not constitute a genus. Their Lordships were unable to find any adequate ground for limiting the general and ordinary meaning of the term "taxation," which included national taxation. It was true that there was no direct taxation in the colony until 1917. The present Income Tax Act, passed in 1929, contained no provision which would operate to deprive the appellants of the benefit of their previous statutory exemptions. The Act of 1902 was declared to be a public Act, and the exemption was granted by the national taxing authority, and there was no reason, apart from any qualifying context, to restrict the meaning of the term taxation to taxes then existing, as was stated by Lord Haldane in *Associated Newspapers Limited* v. *City of London Corporation* [1916] 2 A.C. 429, at p. 442. The appeal should be allowed.

COUNSEL: *Cyril King*, K.C., and *R. J. T. Gibson*, for the appellants; *Brian Dunfield*, K.C., and *Colin Pearson*, for the respondent.

SOLICITORS: *Maddison, Stirling, Humm & Willett; Burn and Berridge.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

In re Camberwell (Wingfield Mews) No. 2 Clearance Order, 1936.

Greene, M.R., MacKinnon and Goddard, L.JJ.
14th and 15th February, 1939.

HOUSING — CLEARANCE AREA — "HOUSES"— "OTHER BUILDINGS"—COMPOSITE BUILDING CONSISTING OF GARAGES WITH LIVING QUARTERS ABOVE—VALIDITY OF CLEARANCE ORDER—HOUSING ACT, 1936 (25 Geo. 5 and 1 Edw. 8, c. 51), s. 25.

Appeal from du Parcq, J. (82 SOL. J. 317).

In January, 1936, the Camberwell Borough Council resolved that a certain area should be declared a clearance area under the Housing Act, 1936, s. 25, on the ground that the dwelling-houses were by reason of disrepair or sanitary defects unfit for human habitation, and that the other buildings, if any, were for a like reason dangerous or injurious to the health of the inhabitants. A clearance order was subsequently made. The premises in the area consisted of two-storey buildings on three sides of a cul-de-sac, with garages and workshops on the ground floor and dwellings separately occupied on the upper floor. The divisions of the dwelling-houses did not in all cases correspond with the divisions of the lower floor. In each case there was a separate entrance to the upper floor. Of the garages, etc., no part which was unfit for human habitation was used as a dwelling-house. A mortgagee of the premises, A.B., objected to the order, which was confirmed by the Minister of Health in November, 1937. The Act came into force between the making of the order and the confirmation, but it was agreed to treat the matter as though it was governed entirely by the Act. du Parcq, J., held that the order was within the powers conferred thereby.

GREENE, M.R., dismissing the appeal of A.B., said that the buildings to which s. 25 referred were (1) "houses," and (2) "other buildings in the area." In the case of "houses," the local authority had to be satisfied (*a*) that they were unfit for human habitation; or (*b*) that they were dangerous or injurious to the health of the inhabitants by reason of their bad arrangement or the bad arrangement and narrowness of the streets. In the case of "other buildings," the latter alone was made relevant. The ultimate result of both alternatives was demolition. The clearance of the site was contemplated by s. 40. His lordship having referred to the Second Schedule, para. 2, said that the buildings in question were "houses" within s. 25. Each case had to be considered on its own facts. It was said that the original purpose of the upper floors was not to be dwelling-houses, but the chief matter to be considered was the state of the premises at the relevant moment. If they had been originally built with dwelling-rooms above and a garage below for the inhabitant to keep his car, it could not have been suggested that they were not houses. This view was fortified by *In re Wilmot*, 157 L.T. 142. The definition of "house" in s. 188 threw no light on the controversy. The resolution in terms followed s. 25 (1) (*a*). It was resolved that the dwelling-houses in the area were unfit for human habitation or were by reason of their bad arrangement or the narrowness or bad arrangement of the streets dangerous or injurious to the health of the inhabitants of the area and that the other buildings in the area were, for a like reason, dangerous or injurious to the health of the inhabitants. The fact that it contemplated the possibility of some of the buildings not being dwelling-houses or some of the dwelling-houses not being unfit for human habitation, did not affect the validity of the part which dealt with dwelling-houses. If the view were correct that all the buildings were dwelling-houses the reference to other matters was mere surplusage. The same applied to the order confirmed by the Minister, which dealt with the entirety—all the buildings comprised in the schedule thereto including the ground and the upper floors. The local authority and the Minister proceeded on the basis that the buildings in question were houses. There was no room for the view that they were proceeding on the basis that the buildings were divided horizontally. The judge had taken the view that the buildings were, as regarded the upper floor, "houses" and as regarded the lower "other buildings." It was not necessary to express a concluded opinion whether the Act contemplated the possibility of such a horizontal division, but his lordship did not wish it to be taken that he agreed with the judge's view.

MACKINNON and GODDARD, L.JJ., agreed.

COUNSEL: *Evershed*, K.C., and *Harold Hill*; *The Solicitor-General* (Sir Terence O'Connor, K.C.), and *V. Holmes.*

SOLICITORS: *Barnes & Butler*; *Solicitor for Ministry of Health.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

University Motors Ltd. *v.* Barrington.

Scott, Clauson and Finlay, L.JJ. 15th February, 1939.

COSTS—COUNTY COURT—APPLICATION FOR NEW LEASE OR COMPENSATION—REFERENCE TO REFEREE—PRELIMINARY SITTING—LESSEE'S NOTICE OF DISCONTINUANCE—LESSOR'S APPLICATION FOR TAXATION OF COSTS—SUBSEQUENT APPLICATION TO CONSIDER REFEREE'S REPORT—WHETHER A "HEARING"—WHETHER JURISDICTION IN

JUDGE TO CERTIFY THAT COUNSEL'S FEE AND SOLICITOR'S CHARGE SHOULD NOT BE LIMITED TO SCALE—LANDLORD AND TENANT ACT, 1927 (17 & 18 Geo. 5, c. 36), s. 5—COUNTY COURT RULES, Ord. XL, Ord. XLVII, r. 21 (1), (3).

Appeal from Westminster County Court.

The company, who held business premises in London for twenty-one years under a lease made in 1923, applied on the 18th May, 1938, under the Landlord and Tenant Act, 1927, s. 5, and Ord. XL of the County Court Rules for a new lease, or alternatively compensation for goodwill. On the 17th June, 1938, the matter was referred under the Act for inquiry and report. On the 28th June, 1938, the referee held a preliminary meeting, made an order for directions and fixed a date for the hearing. On the 29th July, 1938, the company served on all persons concerned a notice under Ord. XVIII that they were wholly discontinuing the application. On the 5th August the referee made a report to the effect that, having held a preliminary meeting when he made an order for directions and appointed a date for the hearing, he had been informed by the company's solicitors by notice that they would not proceed further in the matter and wholly withdrew from and discontinued it. The landlord, on the 24th September, 1938, gave notice that he would apply to the judge for an order for directions as to taxation of his costs of the proceedings. On the 28th October, 1938, the judge made an order directing the company to pay the landlord's costs to be taxed on Scale C. He gave a certificate for two counsel under Ord. XLVII, r. 21 (2), a certificate for plans under Ord. XLVII, r. 22 (1), and a certificate for two expert witnesses under Ord. XLVII, r. 30. Holding that he had no jurisdiction, he refused certificates (*a*) under Ord. XLVII, r. 21 (1), directing that the fees of the landlord's counsel should not be limited to the amount appearing in Scale C, and (*b*) under r. 21 (3) directing that the charge of the landlord's solicitors for taking instructions for brief should not be limited to the amount appearing in the scale. As he would otherwise have been prepared to grant them he gave the landlord leave to appeal. The formal order on that occasion was: "Upon reading the report . . . of . . . the referee . . . and upon hearing counsel for the applicants and for respondent it is ordered that the applicants do pay to the Registrar" the costs of the then respondent (the landlord). On the 15th November, 1938, the landlord applied to the judge to consider the referee's report, hear the parties and make such order as might be just. The application was dismissed on the 17th November, 1938, leave being given to appeal.

CLAUSON, L.J., delivering the court's judgment dismissing the landlord's appeal, said that r. 21 formed part of a series of rules appearing in Ord. XLVII, under the heading: "Part III. Items of Costs." These rules gave power to the judge or in some cases the registrar to make particular provision with regard to costs (e.g., certifying a case as fit for counsel). The particular characteristic of r. 21 (1) and (3) was that to see whether in any case the judge could act under them it was essential to ascertain whether the occasion on which he professed so to act was or was not "the hearing." The phrase was susceptible of different meanings in different contexts (*Green* v. *Lord Penzance*, 6 App. Cas. 657). The taxation of the landlord's costs which in the case of discontinuance gave the party against whom the proceedings were discontinued the right to have his costs taxed could not be effectively determined unless someone (apparently the judge) determined which scale was to apply. Accordingly, the application which came before the judge on the 28th October, was made. He took the view that this was not "the hearing" within r. 21. He also took the view that the proceedings on the 17th November were not "the hearing." The court did not differ from his decision.

COUNSEL: *Levy*, K.C. and *Merlin*; *Stenham*.

SOLICITORS: *Cardew Smith & Ross*; *Finnis, Downey, Linnell & Chessher*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

National Electric Theatres Ltd. *v.* Hudgell.

Morton, J. 14th February, 1939.

LANDLORD AND TENANT—TENANT INTENDING TO DEMOLISH PREMISES DEMISED—NEW BUILDING FOR DIFFERENT BUSINESS TO BE ERECTED—WHETHER "IMPROVEMENT"—LANDLORD AND TENANT ACT, 1927 (17 & 18 Geo. 5, c. 36), s. 3.

By two leases dated 1911 and 1918 certain land at Finchley with the buildings thereon were demised for ninety-nine years. In each lease there were covenants by the lessees not without the lessors' written consent to use the holding otherwise than as a hall duly licensed for entertainments or meetings, such consent not to be unreasonably withheld. In the 1918 lease the lessees covenanted not to erect anything on or near the south-west corner of the land so as to prevent any person or persons having access to the windows of the shop and premises belonging to the lessors adjoining the demised land on the south-west or so as to interfere with the access and use of light and air to and for those windows. In 1921 the leases were assigned to the plaintiffs. At all material times down to March, 1938, the demised premises were used as a duly licensed cinema. The licences having expired, the local authority refused to renew them in respect of the existing buildings or to grant licences in respect of any building on the holding which did not leave a substantial part vacant for exits. Thereafter the building remained derelict. The plaintiffs now proposed to demolish it and to build on the site, which had a frontage of 120 feet and a depth of 125 feet, a row of shops with flats over them of the same type as those in the neighbourhood and of equal quality. They sought three declarations: (1) That this would be an "improvement" within the Landlord and Tenant Act, 1927, s. 3; (2) that it was "reasonable and suitable" to the character of the holding within s. 3; and (3) that the windows referred to in the covenant against certain erections on the south-west corner did not refer to the windows at the rear of the premises protected.

MORTON, J., dealing with the question of construction arising on the third claim, considered the terms of the covenant and the nature of the premises, said that the context did not allow a limited meaning to the words "the windows of the shop and premises belonging to the lessors" which would ordinarily include all windows, and that he would not make the third declaration asked. As to the first claim, the works would enable the holding to be used profitably and would greatly increase its value, adding to the letting value at the end of the term. They would benefit the tenants and the landlord's rent would be better secured. They would be an improvement in the ordinary use of the word. If the holding had consisted of a piece of land with a row of badly-built and insanitary shops on it, and the lessees had pulled them down and erected a row of well-built shops that would be an improvement. The words "including the erection of any building" in s. 1 (1) could not be limited to the erection of a building on some part of the holding which was vacant, but might be read as applying to the erection of a building in place of one which previously stood on the holding. There was no indication in s. 2 (2) that an improvement could not consist of a demolition or re-building or that if business premises could be demolished and re-built they must be used for the purposes of the same business. The words of s. 3 (1) could not refer only to alteration of buildings. Otherwise the erection of a new building on an unoccupied piece of land could not be an improvement, and it was clearly contemplated by Pt. I of the Act that it might be. His lordship having referred to s. 21, said that s. 17 (4) did not throw any light on the problem. There was no reason for reading into the words "an improvement on his holding" in s. 3 (1) a condition that some part of the original bricks and mortar of the buildings on the holding must be retained. Thus, if the tenant of a

grain store replaced a defective wall by a new one, and later, as each of the other three walls became defective, treated them similarly, finally replacing the roof which had become defective, and putting down a new floor, each of those acts would be an improvement, yet in the end the building would be quite new. The words "improvement on his holding" covered what was intended here. There would be a declaration that the works constituted an "improvement" within s. 3. *F. W. Woolworth & Co., Ltd.* v. *Lambert* [1937] Ch. 37, and *Lambert* v. *F. W. Woolworth & Co., Ltd.* [1938] Ch. 883, did not assist. As to the second declaration asked, the plaintiffs alleged the present building could not be used for any purpose which would produce a reasonable income, or alternatively that if they could be used for income-producing purposes the net income obtained would be much smaller than that which could be obtained if the proposed works were carried out. They also alleged that the holding was so small that a building leaving the space required by the local authority could not be used at a reasonable profit for entertainments or meetings. The defendant denied these allegations. To determine the issue raised his lordship would have to consider whether in the light of the facts found by him the improvement was "reasonable and suitable to the character of the holding," taking into consideration the matters mentioned in s. 3 (2). But that was a task given by the Act to certain defined tribunals not including the Chancery Division. With regard to the first declaration, his lordship had been asked to decide on agreed facts whether certain works would be an improvement within s. 3. That was a question of construction which a tenant could properly ask the court to determine before he decided whether or not to take the steps described in s. 3. With regard to the second declaration the facts were not agreed, and even if they were his lordship could not treat himself by a series of assumptions as being in the place of the tribunal selected by the Act. The second declaration asked would not be made.

COUNSEL: *Radcliffe*, K.C., and *Rink*; *D. Jenkins*, K.C., and *A. Berkeley*.

SOLICITORS: *W. G. R. Saunders*; *Merton Jones, Lewsey & Jefferies*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Barker *v.* Mumby.

Lord Hewart, C.J., Charles and Singleton, JJ.
18th January, 1939.

GAMING—LOTTERY—SCHEME WITH TWO ALTERNATIVE FORMS OF BETTING—SKILL INVOLVED IN ONE ALTERNATIVE—WHETHER SCHEME A LOTTERY—BETTING & LOTTERIES ACT, 1934 (24 & 25 Geo. V, c. 58), s. 22.

Appeal by case stated from a decision of the Hull stipendiary magistrate.

An information was preferred by the appellant, Barker, a detective-inspector of police, charging him with having, in connection with a lottery promoted in Great Britain, unlawfully printed certain tickets for use in that lottery, contrary to s. 22 of the Betting & Lotteries Act, 1934. The respondent was a printer and, in connection with the lottery in question, he printed a number of cards on the front of each of which a number of bets were set out. Inside each card was a list of jockeys, and the recipient of a card was invited to bet on three named jockeys winning the whole or part of the bets on the front of the card. An alternative of an "optional bet" was also given under which the backer was allowed to make his own selection of any three jockeys from the list for any one of the bets. The bets invited were stated to be credit bets. It was contended for the respondent that the scheme was not a lottery, being a scheme of credit betting and as such in no way unlawful; and that the selection of jockeys under the "optional bet" involved the exercise of skill, as a result of which the scheme could not be a lottery. The magistrate held that a transaction represented by any of the cards was a credit bet, and that, as the taker of any of the cards was at liberty, using his skill and knowledge, to select any three of the list of jockeys printed on them, the bets laid by the promoters did not constitute a lottery.

LORD HEWART, C.J., said that the word "lottery" was written all over the scheme. In *Challis* v. *Newman* (1937), unreported, a case in that court, he had said with reference to the scheme there under consideration, that the primary purpose of the ticket was to sell for threepence a chance in a lottery. A man paid threepence and afterwards found when he had opened his ticket that he had some chance of winning some money on the results then to be ascertained of a series of football matches. He had nothing whatever to do with the matter except to pay threepence—in the present case one penny—and took his chance; but there was added to the ticket what was called an optional bet. The man into whose hands the ticket came might, if he pleased, make another bet of his own. The argument was that the presence of that alternative so redeemed the whole scheme as to prevent this ticket from being one for use in a lottery. But the two schemes on the ticket were separate. The main one was a lottery pure and simple. A man paid threepence with a blind chance of something over which he had not the faintest control. The magistrate there held that, as the purchaser of a coupon was entitled to exercise his own skill in either accepting the teams stamped on the coupon or in substituting for them teams of his own selection, the scheme was not a lottery; in other words, the ingredient of skill which was to redeem the lottery was derived, not from any skill exercised in pursuance of the alternative scheme, but from the skill which a person showed in deciding not to try the lottery. Those remarks *mutatis mutandis* applied to the present case which was *a fortiori* on that. The appeal should therefore be allowed.

CHARLES and SINGLETON, JJ., agreed.

COUNSEL: *W. A. Macfarlane*, for the appellant; *W. A. L. Raeburn*, for the respondent.

SOLICITORS: *Sharpe, Pritchard & Co.*, for the Town Clerk, Hull; *Smith & Hudson*, for *Payne & Payne*, Hull.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Warner *v.* Elizabeth Arden, Ltd.

Wrottesley, J. 23rd January, 1939.

NEGLIGENCE—BAILMENT—CUSTOMER AT BEAUTY SPECIALISTS—HANDBAG CONTAINING NECKLACE LEFT IN DRESSING ROOM—NO NOTICE TO EMPLOYEES—DISAPPEARANCE OF NECKLACE FROM BAG—LIABILITY.

Action for damages for negligence in the custody of a necklace.

On the 12th November, 1937, the plaintiff visited the premises of the defendant company, who were beauty specialists. She was shown to her dressing-room, where she took off her hat, coat, and earrings. She said that she had on, and took off, her necklace, which was a valuable one of pearls. She told no one at the time that she had done so, and Wrottesley, J., found, as a fact, if necessary, that no one of the defendants' servants knew that the necklace was in the handbag. The plaintiff left the handbag in her room when she went to the electrical treatment room, and on her return after the treatment the necklace had disappeared. The plaintiff accordingly brought this action claiming the value of the necklace.

WROTTESLEY, J., said that the first question was whether there was a bailment or any delivery of the article to the defendants. In ordinary cases of that type the bailment was proved by the handing over to the defendants of the article for safe custody, and its acceptance by the defendants. This being a case of contract, there must be proof that both parties

entered into a contract. It was said that there was a contract by implication, but an implied contract could not be set up merely by establishing circumstances in which the parties would be likely to do something. A contract could only be implied in circumstances in which a sensible defendant must know that he had promised to do that something. The defendants' manageress, if asked whether the defendants were liable for any valuable jewellery which customers chose to leave in their rooms, would, he (his lordship) felt sure, have replied in the negative. Cases had been cited in which articles had been handed to defendants or their servants and the question was whether due care had been taken, but that was not the position here. Judges had often been warned of the danger of implying terms in contracts. *A fortiori* it was dangerous to imply contracts. The cause of action therefore failed. His lordship then found the defendants not guilty of negligence, and that, if there was a bailment, the plaintiff could not be guilty of contributory negligence as she was not there after the bailment. There must be judgment for the defendants.

COUNSEL: *John Morris*, K.C., and *Melford Stevenson*, for the plaintiff; *D. N. Pritt*, K.C., and *John Foster*, for the defendants.

SOLICITORS: *Gordon, Dadds & Co.; William Charles Crocker.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

In re Bainbridge; South Shields (D'Arcy Street) Compulsory Purchase Order.

Charles, J. 7th February, 1939.

HOUSING—COMPULSORY PURCHASE ORDER IN RESPECT OF PREMISES COMPRISING DWELLING-ROOMS AND SHOPS—DWELLING-ROOMS RENDERED STRUCTURALLY UNINHABITABLE BY DATE OF PUBLIC LOCAL INQUIRY—MINISTER'S FINDING THAT PREMISES HOUSES—WHETHER COURT ENTITLED TO INTERFERE.

Appeal under the Housing Act, 1936.

On the 30th October, 1937, South Shields Borough Council made an order under s. 29 of the Housing Act, 1936, for the compulsory purchase of certain land and premises comprised in a clearance area at South Shields, on the ground that they were unfit for human habitation. On the 9th November, 1937, the appellant, the owner of the property, lodged an objection against the confirmation of the order by the Minister of Health. In March, 1938, the Minister caused a public local inquiry into the matter to be held. The properties comprised dwelling-rooms on the first floor, but the rooms on the ground floor had been, with the exception of two rooms, converted into shops by the date of the public inquiry. Structural alterations had, further, been made making the use of the living-rooms for habitation impossible. The Minister, in deciding to confirm the compulsory purchase order, found that the properties were "houses." The owner appealed against the confirmation of the compulsory purchase order.

CHARLES, J., said that the owner's contention was that the premises were not houses at all, and that, while their upper floors might be regarded as houses, the ground floors, which were now used as shops, fell within the category of "other buildings," and not within that of houses. *In re Butler; Camberwell (Wingfield Mews) No. 2 Clearance Order*, 1936 [1938] 2 K.B. 210; 82 SOL. J. 317, was relied on as showing that premises of the character of those in the present case should be regarded as one structure superimposed on another, both structures being treated separately and in different ways, the upper structure as a house and the lower structure as an "other building." That case, however, was distinguishable from the present. Counsel for the appellant argued that the Minister's finding that the premises were houses was a matter of law, or of mixed law and fact, and not of fact alone, and that the court could, therefore, review that finding and, if it thought right, reverse it. In his (his lordship's) opinion, however, the Minister's finding was one of fact with which the court could only interfere if the Minister had no material on which to base it. It therefore became necessary to consider the evidence which was before the Minister, and there was clearly ample evidence on which to find that the premises were houses. That conclusion was supported by *In re Morris; In re Liverpool (Portland Street, No. 2) Housing Confirmation Order*, 1935 (unreported), where Swift, J., discussed the question whether or not there was material before the Minister on which he could determine that the buildings there in question were dwelling-houses within the meaning of s. 1 (1) of the Housing Act, 1930. Swift, J., there declined to interfere with a decision of the Minister that certain premises were houses. He said that whether or not a building was a dwelling-house seemed to be entirely a question of fact on which the court could not interfere; but there was always a question of law looming behind that question of fact, namely, whether there was any evidence on which the facts could be found which were necessary in order to establish that it was a dwelling-house. Those words were applicable here. There being evidence to support the Minister's finding, the appeal must fail.

COUNSEL: *H. A. Hill*, for the appellant; *The Solicitor-General* and *Valentine Holmes*, for the Minister.

SOLICITORS: *Allen & Overy; The Solicitor, the Ministry of Health.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

R. *v.* Mills.

Lord Hewart, C.J., Macnaghten and Singleton, JJ.
27th March, 1939.

CRIMINAL LAW—PROCEDURE—JURY—NECESSITY FOR TRUE AGREEMENT—DUTY OF EACH JUROR TO FORM AND EXPRESS SEPARATE OPINION—MERE ACQUIESCENCE INCONSISTENT WITH JUROR'S OATH.

Appeal from a conviction before the Recorder at the Central Criminal Court.

The appellant was convicted of obtaining a cheque by false pretences, and sentenced to nine months' imprisonment. In the course of his summing up to the jury, the Recorder used the following words: "Where you have got one or two, a small minority in the jury, who are thinking perhaps differently from the others, it is quite consistent with their oaths as jurymen that they should, after hearing what the others have got to say, come to the conclusion that they themselves might be wrong." He also said: "and it would be consistent with the discharge of their duty and with their oaths under those circumstances, if they thought they were wrong, to accept the view of the majority." The accused now appealed on the ground that the Recorder had misdirected the jury in directing them that it was in keeping with their duty for the minority to accept the decision of the majority and in telling them that he could not release them until they had reached a verdict.

LORD HEWART, C.J., said that it was very important to observe the very words which the Recorder had used on a most grave and crucial matter. Nothing could be more to be deplored than the giving of an impression to a jury that it might be right for them to appear to have arrived at an agreement when in fact they had not, or to appear to express a view which they did not honestly and individually entertain. Nothing could possibly have been further from the mind of the Recorder than to create any impression contrary to the well recognised impression, but the question was whether the words which he had used might unfortunately have conveyed the wrong impression to the jury. The difficulty was what might have been the effect on the minds

of the jury of the words used. As to the first passage, the conclusion required of the minority was that they were wrong. The second passage would be true only if the minority had been honestly and sincerely led to come to a view different from that which they had previously held. The criticism which had been directed against that passage was that it might conceivably have led the jury or some of its members to coquette with the notion that, for the sake of conformity or convenience, it would be consistent with their oaths to make it appear that they accepted a view which in fact they did not accept. Such a conclusion would be utterly subversive. A loose acquiescence by a minority in the view of the majority for the sake of conformity would be not merely most undesirable, but flagrantly wrong. It was fundamental that a jury should agree, and by "agree" was meant honestly agree, not make a colourable appearance of agreeing. The danger was that the use of certain of the expressions taken in juxtaposition with the Recorder's final words: "I cannot release you until you have come to a conclusion," might have conveyed to the jury that it was necessary that they should appear to have arrived at a conclusion, and that the minority should, for the sake of appearance of unanimity, profess to be reconciled with a view which they did not in fact entertain. It was fundamental that a jury should not be led, from a desire to acquiesce, or to avoid eccentricity, or to save time and trouble, to represent themselves as holding a view which they did not hold. Their verdict must be a true verdict given according to the evidence, not an untrue verdict according to someone's actual or supposed convenience. Nothing was more primary or fundamental in its character than the duty of each juror to form and express his opinion. Merely to acquiesce would be not only indefensible, but actually wrong, and a violation of his oath as a juror. No words yet used by any judge in any court could fairly be construed as conniving at or encouraging any such notion. There could be no doubt what the Recorder had intended to convey to the jury in the present case, but he had used one or two perilous phrases which might conceivably have caused some members of the jury to incline their minds to a wrong view. In those circumstances, the court had come to the conclusion that the only proper course was to allow the appeal and quash the conviction.

COUNSEL: *W. H. Hickin* for the appellant: *Maxwell Turner* for the Crown.

SOLICITORS: *Registrar of the Court of Criminal Appeal; Solicitor for Metropolitan Police.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Gibbs-Smith *v.* Gibbs-Smith.

Henn Collins, J. 17th January, 1939.

DIVORCE—DESERTION—PETITION PREVIOUSLY PRESENTED BUT NOT SERVED—NO INTERRUPTION OF STATUTORY PERIOD (1 Edw. 8 and 1 Geo. 6, c. 57, s. 2 (*b*)).

This was a wife's undefended petition for dissolution of marriage on the ground of three years' desertion immediately preceding the presentation of the petition. The parties were married in 1930. On 7th August, 1935, the present petitioner had presented a petition on the ground of her husband's alleged adultery, but that petition had not been served, and, in fact, was dismissed on the application of the petitioner on 1st July, 1938, just before filing the present petition. The question arose whether the presence on the file of the earlier petition prevented meanwhile the statutory period of three years' desertion from running.

HENN COLLINS, J., in giving judgment, said that there was no question that there was desertion in the present case, certainly from July, 1932, subject only to the fact that on 27th August, 1935, the present petitioner filed a petition for divorce from her husband, and the question was whether or not the filing of that petition, which remained upon the file until 1st July, 1938, had the effect of suspending during those three material years the desertion which would otherwise have been completed. In fact, the petition was never served, and he (his lordship) thought that that fact distinguished the case from *Marthews* v. *Marthews*, 82 SOL. J. 953, and *Walton* v. *Walton*, 82 SOL. J. 954, which followed it, in that the mere filing of a petition, not followed by service, did not suspend the existing obligation between the spouses to cohabit, and, therefore, it had not interrupted the desertion. The petitioner had proved all that was necessary—namely, desertion for three years immediately preceding the date of the petition, and there would be a decree *nisi* with costs.

COUNSEL: *J. B. Blagden*, for the petitioner.

SOLICITORS: *Greene & Underhill.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Jackson *v.* Jackson (otherwise Prudom).

Henn Collins, J. 3rd February, 1939.

NULLITY—PRE-MARITAL PREGNANCY OF RESPONDENT—CHILD BORN AFTER MARRIAGE—EVIDENCE OF NON-ACCESS BY PETITIONER ADMISSIBLE—RULE IN *Russell* v. *Russell* [1924] A.C. 687—MATRIMONIAL CAUSES ACT, 1937 (1 Edw. 8, and 1 Geo. 6, c. 57), s. 7 (1) (*d*).

This was a defended petition by a husband for a decree of nullity on the ground of the respondent's pregnancy by another man at the date of the marriage within the Matrimonial Causes Act, 1937, s. 7 (1) (*d*). The marriage took place on the 24th January, 1938, and the wife gave birth to a child on the 29th January 1938. In examining the petitioner in chief his counsel was proceeding to put questions, the answers to which would tend to show that the petitioner had not had intercourse with the respondent at the probable date of the conception of the child when objection was taken that they were inadmissible as offending against the rule in *Russell* v. *Russell* [1924] A.C. 687.

HENN COLLINS, J., in giving judgment, referred to the language of s. 7 and said that it proceeded on an assumption of pregnancy which must itself involve the assumption of the wife having had connection with some male person, and it therefore put upon the petitioner the obligation of proving what was in effect a negative—namely, that that male person was not himself. In the circumstances in which persons about to marry found themselves, one would expect to find all the evidences of desire and opportunity from which, in cases of divorce, one would be inclined to infer adultery. It must, therefore, be extraordinarily difficult for any petitioner to proceed, under that section, to establish by any evidence but his own that he was not the person responsible. For those reasons, and for some others that Mr. Streatfield had urged upon him (his lordship) his predisposition was to find that there was no rule of law excluding the kind of evidence which the questions propounded were intended to elicit. However, his predisposition in the matter had, of course, no weight at all if the authorities were against it. Therefore he looked critically at the judgment in *Russell* v. *Russell*, *supra*, which was the most authoritative exposition of a rule of law which had existed for a very long time in the history of our jurisprudence, and he thought that that case did not exclude the questions which it was proposed to ask the petitioner. He thought that perhaps the most succinct epitome of the statement of the rule was to be found in the opinion of Lord Finlay, at p. 711. He (his lordship) could not think that by any inadvertence such a master of precise exposition as was Lord Finlay used terms which followed the rather general terms in which Lord Mansfield expressed it in an earlier case, *Goodright d. Stevens* v. *Moss* (1771), 2 Cowp. 591. The summary which Lord Finlay gave was as follows, at p. 711: "It is beyond controversy that by the

common law of England neither husband nor wife could give evidence of non-access after marriage for the purpose of showing that a child of the wife born during the marriage was illegitimate." The significance of that was that it is confined to non-access after marriage. The particular question which arose in the present case was whether a husband could give evidence as to non-access before a particular date before marriage. He did not think that the rule in the *Russell Case*, *supra*, as defined by Lord Finlay covered the kind of evidence which it was now proposed to tender. It was quite clear, he thought, also, on reading *The Poulett Peerage* [1903] A.C. 395, that that was the proper limitation of the rule. The Earl of Halsbury, L.C., said, at p. 398: "The question is whether it is possible for a husband to be asked whether he had intercourse before marriage with the woman who afterwards became his wife. I confess I should be startled if I thought that that which appears to have been in the mind of Sir John Romilly at the time he gave the decision referred to could be held to be the law of England. Is it conceivable that a man taking to wife a person whom he imagined to be a pure virgin, and finding out that he had been deceived and that the woman was pregnant when he married her, should not be at liberty to say afterwards that, so far as he was concerned, he had every reason to believe that she was a virgin; and that, having spurious issue put upon him, he should not be at liberty to say, 'I never had intercourse with my wife before marriage'"? He was there saying that a husband might give evidence that he was not the father of a child conceived before marriage. That was precisely the purpose of the questions in the present case, with the distinction that they did not go the length of saying, "I never had intercourse with the woman before marriage," but said only, "I never had access before the named date," that date, of course, being the date calculated with reference to the subsequent birth of the child. Therefore he (his lordship) thought that the questions were admissible.

COUNSEL: *C. H. B. Streatfield*, K.C., and *G. C. Tyndale*, for the petitioner; *Victor Williams*, for the respondent.

SOLICITORS: *Reed & Reed*, agents for *Colin Brown & Kidson*, Whitby; *Fielder, Le Riche & Co.*, agents for *King & Thompson*, Middlesbrough.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law].

Obituary.

MR. C. F. BOOTH.

Mr. Charles Frederick Booth, solicitor, a partner in the firm of Messrs. Collyer-Bristow & Co., of Bedford Row, W.C., died at Shepherds Hill, N., on Monday, 27th March, at the age of eighty. Mr. Booth was admitted a solicitor in 1881.

MR. H. A. HORE.

Mr. Henry Augustus Hore, retired solicitor, formerly senior partner in the firm of Messrs. Hore, Pattisson and Bathurst, of Lincoln's Inn Fields, W.C., died at Englefield Green, Surrey, on Tuesday, 28th March. Mr. Hore, who was admitted a solicitor in 1884, was for many years Registrar of Bow County Court.

MR. C. R. WALKER.

Mr. Charles Robert Walker, solicitor, senior partner in the firm of Messrs. C. R. Walker & Renney, of Sunderland, died recently. Mr. Walker was admitted a solicitor in 1882.

The directors of the Legal & General Assurance Society, Ltd., have appointed Mr. R. H. McLaren, who has been manager at Sheffield Branch since October, 1935, to be manager of Ilford Branch as from the 1st April. Mr. J. Blakemore, A.C.I.I., of the Bristol Branch, has been appointed manager of Sheffield Branch.

Societies.

United Law Clerks' Society.

The 107th Anniversary Festival Dinner of this Society was held at the Connaught Rooms on the 20th March, with Mr. Justice HILBERY in the chair.

In proposing the toast of The Society, the CHAIRMAN read a message of good wishes from Mr. Justice Simonds, who was to have presided at the dinner. Mr. Justice HILBERY said that he was merely an understudy of the star performer, who was laid low with what doctors called, for want of a better word, influenza. He himself had, however, qualifications to speak to the Society, for he commenced his legal career in a solicitor's office. When he had finished his school education his father had told him that if he went to a university, at the end of three years he would be unemployable, and advised him to enter his office. He would not reveal the salary at which he started, but he hoped it did not correspond to his father's estimation of his ability. He owed a great deal in those early days to the valuable assistance of his father's managing clerk, who navigated him through the intricate mazes of the law. For some years he moved among managing clerks of other firms and had come to regard them with admiration and affection.

Most of those who were present were thoroughly acquainted with the splendid work achieved by the United Law Clerks' Society, but there might be some who were unfamiliar with its objects. These objects were the thoroughly laudable ones of paying medical and surgical benefits to members who required them, providing sick pay, superannuation allowances and pensions, and, in general, granting relief to members or their dependants, wherever a genuine need existed. Such objects, thus starkly stated, must commend themselves to everyone. He could quite well give numerous examples of the alleviation of distress, or of the bitterness being taken out of the winter of old age, by the benefactions of the Society, but members could imagine these for themselves.

The Society also stood for the unity of the whole legal profession and was composed of members of both branches of the law. The junior clerk in the solicitor's office, the fully-fledged solicitor, the senior partner of the firm, the aspiring barrister, the elderly barrister in the silken gown and the judge on the bench were all kindred in the great brotherhood of the law. He appealed to all members of the profession to support the Society as generously as possible and to respond to Mr. Justice Simonds' eloquent appeal. Not only had the Society been kept in existence for 108 years as a result of the voluntary efforts of members, but it had been brought to its present flourishing state and he considered that this was a remarkable achievement.

The Honorary Treasurer of the Society, Mr. JOHN SMEATON, in reply, said that the Society was founded in 1832 as the result of a meeting of a few law clerks in, of all places, a coffee-house in Southampton Buildings. A few years earlier a similar society had been formed but had come to grief. At the very first meeting the legal profession had shown its interest in the Society by making a donation to its funds—or at least one of its members had. That interest had been maintained and increased until that evening they had an array of legal talent taking an interest in its work and, he trusted, expressing that interest in tangible form. For the first two years the Society had limited its Annual Festival to members, but in 1835 members of the legal profession were invited, and in that year the donations had amounted to £18 9s. 4d. The generous assistance accorded the Society by the profession over the past hundred years served to illustrate the happy relationship which existed between employer and clerk, and without that assistance the Society could not have maintained its scale of benefits. He had heard many suggestions for the use to which its funds could be put—such as the provision of cushions for the very hard seats in the Royal Courts of Justice, and the construction of a subway from the Temple to the courts. However tempting these proposals might be, every penny was in fact required for members in the shape of benefits. The Society was greatly indebted to Mr. Justice Simonds for the practical interest he took in its work, and equally indebted to its present Chairman for his support over a number of years.

LAWYERS AND THE COUNTRY.

The toast "The Legal Profession" was proposed by Col. THOMAS CARTHEW, D.S.O., K.C. He declared that the profession had played a conspicuous part in the development, progress and culture of the country through the centuries. He had had the pleasure recently of conducting a foreigner through the law courts and had noted the admiration with which his friend had regarded the dignity and decorum of the proceedings, the great respect in which the judge was held,

and his courtesy and consideration to counsel, jury and witnesses. All these were matters of which we might well be proud. When the Government got into difficulties the first people they sent for to get them out of the mess were the Attorney-General and the Solicitor-General. In his opinion the factors which had brought the legal profession its well-deserved reputation were three. First, there was the national desire and trait of wishing to see everyone have fair play. Secondly, there was our system of selecting as judges men of great experience who had been tried in the fire of controversy and who had the full confidence of the public; and in the third place there was our strong adherence to tradition and our habit of moulding our customs on rules of which we did not know the origin.

He would be very sorry to see any fundamental changes in the conditions under which the law was at present administered. There was less jealousy and backbiting in the legal profession than perhaps in any other, and it was impossible to find a relationship in another profession similar to that which existed between a barrister and his clerk, or the head of a firm of solicitors and his managing clerk. There was confidence, and as a result there was efficiency. In the dynamic and catastrophic events which were taking place in Europe this country might require the services of members of the legal profession. He did not doubt that they would serve loyally in whatever sphere they were placed, and would endeavour to uphold the principles of justice and right on which the profession rested.

Master W. VALENTINE BALL, in response, said that some people had strange ideas concerning the duties of a Master. He had sometimes had letters addressed to him as "The Master of the Rolls," and on one occasion he received a letter inscribed "The Master of the Ball, Royal Courts of Justice." Most of those who were there were old friends of his, and he had often tried to help them with their legal problems. Sometimes they puzzled his wits. Once he was asked whether it was lawful to serve a writ on Sunday in Baluchistan, and the question was not so simple as it seemed, because there were three types of religion in that country, each of which held its Sabbath on a different day of the week. That question remained unanswered. He still kept in touch with members of the Bar, and he hoped he would never be too old to remember how much it meant to him to get some word of encouragement from the Master when he was trying to devil a case for another man. There were certain things in the realm of practice and procedure which would not obtain in Utopia. In Utopia the office boy would not always put the papers in the wrong file; counsel's clerk would always be satisfied with the fee marked on the brief; the papers would always be ready when the solicitor's clerk called for them; the "Annual Practice" would be sufficiently compact to be carried in the waistcoat pocket; and the plaintiff and the defendant would walk away from the court together, agreeing that justice had been done. The courts of justice were lighted by the lamps of integrity, independence, dignity, wisdom, patience, courage, humour, and—outshining all the others—truth. Majestic truth was the foundation of justice between man and man, and where truth was found, her sister liberty was found also.

The toast of The Ladies and Other Guests was proposed by Mr. C. E. MACKLIN, who announced that the sum of £725 had been collected as a result of the appeal by Mr. Justice Simonds, sponsored by Mr. Justice Hilbery.

In reply, LORD PORTER said that there existed a great comradeship in the legal profession which was shared by the smallest junior. The duties of managing clerks were extremely varied. Not only did they arrange briefs and supervise cases, but they looked after the barrister all through his legal career and smoothed the way to the best of their ability.

Mr. NORMAN R. FOX-ANDREWS proposed the toast of The Chairman, and Mr. Justice HILBERY, in reply, said that the lateness of the hour reminded him of a story which was told about Voltaire. Voltaire had been continually asked by a very wealthy Frenchman to write an epitaph for his wife, whom he had just lost. He had offered a handsome payment for this service, but Voltaire had refused to accept. Eventually he assented, and sent the gentleman the epitaph, which consisted of one word—"*Enfin.*" At last they had come to the end of a very happy evening. He was delighted to have had the opportunity of presiding at the dinner, and it was an honour which any one of His Majesty's judges would have been proud to accept, as they all knew how much they owed to the law clerks on either side of the profession.

Selden Society.

The fifty-third annual meeting of the Selden Society was held in the Council Room in Lincoln's Inn Hall on the 23rd March, with the President, Lord Wright, in the chair.

In moving the adoption of the annual report, the Chairman said that there was little new or exciting to be related. The experience and work of the Society were extremely valuable, but not spectacular. A great authority had said that the Year Books presented a unique historical memorial of the early development of the law, and anyone who was so minded could make himself acquainted with the way in which lawyers and judges of old had regarded the problems of the common law. The recent volume of "Select Cases in the Court of King's Bench under Edward I" showed clearly the continuity of the common law. The language used in those reports, despite the difference in dialect, was the language used by lawyers to-day. The purpose of the Society was to bring within the scope of the ordinary lawyer, as well as the student, this great mass of illuminating material, which was dear to the soul of every common lawyer who had time to read it.

The membership during the year had diminished by three, and everyone would like to see it increased. Apart from special donations from the Inns of Court, The Law Society and the Society of Public Teachers of Law, the Selden Society depended upon its subscriptions for the maintenance of its work. The Society was proceeding with its publications. Mrs. Doris Stenton was editing the Rolls of the Justices in Eyre; Mr. G. J. Turner a Volume of Year Books of Edward II; Sir William Holdsworth and Mr. Collas a Volume of Year Books of 11 Edward II; and Miss Hemmant a Volume of Cases in the Exchequer Chamber. Three valued members of the Society had passed away in the course of last year. Sir George Talbot had been well known to him as a colleague at the Bar and on the Bench; Mr. A. E. Stamp had been deputy keeper while he (Lord Wright) was Master of the Rolls, and his efficiency and zeal had been outstanding. Sir Arthur Underhill had been a very great man in his sphere and had rendered important services to the State in modifications of the law of property. Lord Maugham's term of office as a vice-president had expired, and in accordance with the nomination of the Council, the Chairman declared Mr. Hubert Hall elected in Lord Maugham's place. Five new members of Council were also elected, and a vote of thanks to Lord Maugham was passed on the motion of Lord Wright, seconded by Mr. Justice Macnaghten.

Lord Justice Clauson seconded the vote of thanks to the officers and literary directors, also moved from the chair.

Judge Hildesley proposed and Mr. T. S. Curtis seconded a vote of thanks to the Inn for the use of the Council Chamber.

Mr. Justice Macnaghten proposed a vote of thanks to the Chairman, who briefly replied.

Liverpool Law Clerks' Society.

The Annual Meeting of the Liverpool Law Clerks' Society was held on Tuesday, 28th March, when the committee submitted the Thirty-sixth Annual Report of the Society for the year ending 28th February, 1939. The report shows that the membership is now 198.

In accordance with the practice of previous years, at the last Annual General Meeting Mr. Godfrey E. Castle, the then President of the Incorporated Law Society of Liverpool, was elected President of this Society for the ensuing year in succession to Mr. A. E. Frankland.

The Hon. Treasurer's statement of accounts shows a balance in hand of £66 16s. 11d. in the general fund and £168 11s. 10d. in the benevolent fund.

The Society opened the session on the 6th October with an address by the Vice-Chancellor of the University of Liverpool (Dr. A. D. McNair, C.B.E., M.A.), who chose as his subject "Law Reform" dealing particularly with the work of the Law Revision Committee of which he is a member.

Professor Batt delivered ten lectures (six on Evidence and four on Damages) all of which were well attended and gave great satisfaction.

Mr. J. J. Somerville was the lecturer on Probate and Estate Duty and these subjects attracted a very fair number of members, who showed their appreciation of the qualities of the lecturer.

The important question of a scheme of pensions for the law clerks of Liverpool has not been lost sight of, and it is hoped that the advisability of promoting a scheme will receive the prompt consideration of the profession.

United Law Society.

A meeting of the United Law Society was held in the Middle Temple Common Room, on Monday, 6th March, Mr. J. H. Vine Hall in the chair. Mr. W. M. Permewan proposed: "That the case of *Chisholm* v. *London Passenger Transport Board* (82 SOL. J. 1050) was wrongly decided." Mr. J. L. P. Harris opposed, and there also spoke Messrs.

H. S. Wood Smith, W. R. Rees Davies, C. H. Pritchard, F. R. McQuown, R. E. O. Rimmer, R. Walters and O. T. Hill. The motion was lost by three votes.

The Hardwicke Society.

A meeting of the Society was held on Friday, 10th March, in the Middle Temple Common Room, the President, Mr. Lewis Sturge, in the chair. The Hon. F. P. Howard moved: "That this House congratulates General Franco." Mr. J. E. Harper opposed. There also spoke, Mr. C. O. Cummins, Mr. Walter Stewart, Mr. Daniel Riddiford, Mr. G. Krikorian, Miss Morgan Gibbon, Mr. L. S. Weinstock and Mr. A. V. Kent. The Hon. Mover having replied, the House divided, and the motion was carried by three votes.

Parliamentary News.

Progress of Bills.

ROYAL ASSENT.

The Royal Assent was given to the following Bills on 27th March:—

Bacon Industry (Amendment).
Czecho-Slovakia (Restrictions on Banking Accounts, etc.).
Defence Loans.
Kirkcaldy Corporation Order Confirmation.
Maryport Harbour.
Mining Industry (Welfare Fund).
Ministry of Health Provisional Order Confirmation (Blackburn).
Ministry of Health Provisional Order Confirmation (Hastings).
Ministry of Health Provisional Order Confirmation (Leyton).
Ministry of Health Provisional Order Confirmation (Luton Extension).
Ministry of Health Provisional Order Confirmation (South Staffordshire Joint Hospital District).

The Royal Assent was given to the following Bills on 29th March:—

Cancer.
China (Currency Stabilisation).
Consolidated Fund (No. 1).

House of Lords.

Croydon Corporation Bill.
Read Second Time. [29th March.
Deer and Ground Game (Scotland) Bill.
In Committee. [23rd March.
Exeter Extension Bill.
Reported, with Amendments. [28th March.
Gosport Corporation Bill.
Reported, with Amendments. [28th March.
King Edward the Seventh Welsh National Memorial Association Bill.
Reported, with Amendments. [28th March.
London County Council (General Powers) Bill.
Committed. [28th March.
Ministry of Health Provisional Order (Colchester) Bill.
Read Second Time. [29th March.
Ministry of Health Provisional Order (Newbury) Bill.
Read Second Time. [29th March.
Mumbles Pier Bill.
Read Third Time. [28th March.
North Metropolitan Electric Power Supply Bill.
Read First Time. [29th March.
Oswestry Corporation Bill.
Reported, with Amendments. [28th March.
Prevention of Fraud (Investments) Bill.
Amendments reported. [28th March.
Scottish Union and National Insurance Company Bill.
Reported, with Amendments. [28th March.
Smethwick Oldbury Rowley Regis and Tipton Transport Bill.
Reported, with Amendments. [22nd March.
Southampton Harbour Bill.
Read Second Time. [29th March.
Tynemouth Corporation Bill.
Reported, with Amendments. [28th March.
Wear Navigation and Sunderland Dock Bill.
Read First Time. [29th March.

House of Commons.

All Hallows Lombard Street Bill.
Reported, with Amendment. [28th March.
Army and Air Force (Annual) Bill.
Read Second Time. [24th March.
Bristol Waterworks Bill.
Reported, with Amendments. [28th March.
Building Societies (No. 2) Bill.
Read First Time. [28th March.
Camps Bill.
Read Second Time. [29th March.
Charitable Collections (Regulation) Bill.
Reported, with Amendments. [28th March.
Civil Defence Bill.
Read First Time. [23rd March.
Cotton Industry (Reorganisation) Bill.
Read Second Time. [27th March.
Disused Burial Grounds Act (1884) Amendment Bill.
Read Second Time. [29th March.
Hairdressers (Registration) Bill.
Read First Time. [28th March.
Highways Protection Bill.
Read Second Time. [29th March.
Jarrow Corporation Bill.
Read Second Time. [28th March.
Local Government Superannuation Bill.
Read Second Time. [29th March.
London and North Eastern Railway (Superannuation Fund) Bill.
Reported, with Amendments. [29th March.
Mumbles Pier Bill.
Read First Time. [28th March.
North Metropolitan Electric Power Supply Bill.
Read Third Time. [28th March.
Sea Fisheries Provisional Order (Tollesbury and West Mersea) Bill.
Reported, with Amendments. [29th March.
Sunderland Corporation Bill.
Reported, with Amendments. [29th March.
Thames River Steamboat Service Bill.
Read First Time. [29th March.
Unemployment Insurance Bill.
Read Second Time. [28th March.
Wear Navigation and Sunderland Dock Bill.
Read Third Time. [28th March.
Wheat (Amendment) Bill.
Read Second Time. [24th March.
Wild Birds (Duck and Geese) Protection Bill.
Reported. [29th March.

Legal Notes and News.

Honours and Appointments.

The King has approved the appointment of Mr. EDWARD SULLIVAN MURPHY, K.C., M.P., Attorney-General for Northern Ireland, to be a Lord Justice of Appeal in the Supreme Court of Judicature of Northern Ireland in the room of the late Lord Justice Best. Mr. Murphy, who was called to the Irish Bar in 1903, was called to the English Bar by the Inner Temple in 1921. He took silk in 1918.

The King has approved a recommendation of the Home Secretary that Mr. GODFREY RUSSELL VICK, K.C., be appointed Recorder of Newcastle-upon-Tyne, to succeed Mr. Justice Hallett. Mr. Vick was called to the Bar by the Inner Temple in 1917, and joined the North-Eastern Circuit, taking silk in 1935. He has been Recorder of Halifax since 1931, after a year as Recorder of Richmond (Yorks).

The Lord Chancellor has appointed Mr. ALFRED FRANK TOPHAM, K.C., to be the Judge of the County Courts on Circuit 51 (Hampshire) in succession to His Honour Judge Lailey, K.C., who retired on the 31st March. Mr. Topham was called to the Bar by Lincoln's Inn in 1900 and took silk in 1922.

Mr. J. H. BOWMAN, Barrister-at-Law, has been appointed Assistant Secretary to the Incorporated Council of Law Reporting, as from 1st April. Mr. Bowman was called to the Bar by Lincoln's Inn in 1913.

Mr. ARTHUR BOCKETT, solicitor, a member of the firm of Messrs. Smith, Rundell, Dods & Bockett, of John Street, Bedford Row, W.C.1, has been appointed London Deputy for the Under-Sheriff of Carmarthen. Mr. Bockett was admitted a solicitor in 1906.

Notes.

Lincoln's Inn Library will be closed from Friday to Tuesday, 7th to 11th April, inclusive, and on Saturday, 15th April. It will be open from 11 a.m. to 4 p.m. on Thursday, 6th April, and from Wednesday to Friday, 12th to 14th April.

When His Honour Judge Barnard Lailey, K.C., sat for the last time at Portsmouth County Court, to which he was appointed in 1916, it was stated that from the many thousands of judgments he had given there had been only forty-four appeals, and of these only twelve had been allowed.

Mr. G. D. Day, Town Clerk of St. Ives (Hunts), and Mrs. Day celebrated their golden wedding last Tuesday. At a gathering in the Town Hall the Mayor presented them with gifts and earlier in the day they received presents from the office staff of Messrs. Day & Son, solicitors, of St. Ives. Mr. Day, who was admitted a solicitor in 1885, has been Town Clerk of St. Ives for forty-nine years. He was Clerk to St. Ives Rural District Council for fifty-three years and Magistrates' Clerk for thirty-six years.

Four women members of the French legal Bar, who were in England on the occasion of the visit of the French President last week, placed a wreath of tulips, carnations, arum lilies, and iris in front of the Bar War Memorial in the Great Hall of the Central Criminal Court. To the wreath was attached a card written in French, saying: "To all our English friends, for our common ideal." The deputation was received by Mr. Sheriff Rowland, Mr. J. B. Montagu, Treasurer of the Central Criminal Court Bar mess, and several women barristers who practise at the court. The visitors were afterwards entertained at luncheon in the building.

EASTER HOLIDAYS.

Next week THE SOLICITORS' JOURNAL will be published on Wednesday. Contributions and Advertisements intended for that issue must be received by first post on Tuesday.

THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED.

The report of The Solicitors' Law Stationery Society, Limited, states that sales for the year 1938 were somewhat higher than those in 1937, and the profit for the year, after making provision for liability for National Defence Contribution, amounted to £56,285, against £63,871 in 1937. The available balance amounts to £68,636, and the Directors recommend that a dividend of 13 per cent., less income tax, be paid for the year, on account of which an interim dividend of 4 per cent. was paid on 18th October last.

As the dividend exceeds 3 per cent., a bonus is distributable under the articles of association amongst solicitors whose accounts with the Society during the year amounted to or exceeded £50. A bonus is also payable to the staff under the profit-sharing scheme.

The dividend and bonuses absorb the sum of £55,478, and out of the balance the Directors propose to add £1,000 to the Women's Pension Reserve, leaving £12,157 to be carried forward.

The annual meeting will be held at 102–7, Fetter Lane, E.C.4, on Tuesday, 4th April, at 12.30 p.m.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. I.	MR. JUSTICE FARWELL.
	Mr.	Mr.	Mr.
April 3	Blaker*	More	Jones
,, 4	More	Hicks Beach	Ritchie
,, 5	Hicks Beach	Andrews	Blaker
,, 6	Andrews	Jones	More

	GROUP A.		GROUP B.	
	MR. JUSTICE BENNETT. Non-Witness.	MR. JUSTICE SIMONDS. Witness.	MR. JUSTICE CROSSMAN. Non-Witness.	MR. JUSTICE MORTON. Witness.
	Mr.	Mr.	Mr.	Mr.
April 3	Hicks Beach	Blaker	Ritchie	Andrews
,, 4	Andrews	More	Blaker	Jones
,, 5	Jones	Hicks Beach	More	Ritchie
,, 6	Ritchie	Andrews	Hicks Beach	Blaker

*The Registrar will be in Chambers on these days, also on the days when the Court is not sitting.

The Easter Vacation will commence on Friday, the 7th day of April, 1939, and terminate on Tuesday, the 11th day of April, 1939, inclusive.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 13th April 1939.

	Div. Months.	Middle Price 29 Mar. 1939.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	103¾	3 17 1	3 14 2
Consols 2½%	JAJO	67⅛	3 14 1	—
War Loan 3½% 1952 or after	JD	95¼	3 13 6	—
Funding 4% Loan 1960-90	MN	105¼xd	3 15 10	3 12 6
Funding 3% Loan 1959-69	AO	93	3 4 6	3 7 6
Funding 2¾% Loan 1952-57	JD	91	3 0 5	3 8 6
Funding 2½% Loan 1956-61	AO	83⅜	2 19 8	3 11 7
Victory 4% Loan Av. life 21 years	MS	105	3 16 2	3 13 1
Conversion 5% Loan 1944–64	MN	107⅞xd	4 12 9	3 2 0
Conversion 3½% Loan 1961 or after	AO	94	3 14 6	—
Conversion 3% Loan 1948-53	MS	96⅜	3 2 0	3 5 11
Conversion 2½% Loan 1944-49	AO	94	2 13 2	3 4 3
National Defence Loan 3% 1954-58	JJ	94½	3 3 8	3 8 0
Local Loans 3% Stock 1912 or after	JAJO	79½	3 15 6	—
Bank Stock	AO	314½xd	3 16 3	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	76½	3 11 11	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	80	3 15 0	—
India 4½% 1950-55	MN	107¼	4 3 11	3 13 9
India 3½% 1931 or after	JAJO	81½	4 5 11	—
India 3% 1948 or after	JAJO	69	4 6 11	—
Sudan 4½% 1939-73 Av. life 27 years	FA	105½	4 5 4	4 3 2
Sudan 4% 1974 Red. in part after 1950	MN	105	3 16 2	3 9 8
Tanganyika 4% Guaranteed 1951-71	FA	104½	3 16 7	3 10 8
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	103½	4 6 11	3 5 0
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	87	2 17 6	3 10 8
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	99	4 0 10	4 1 1
Australia (Commonw'th) 3% 1955-58	AO	82	3 13 2	4 7 3
*Canada 4% 1953-58	MS	108	3 14 1	3 5 8
Natal 3% 1929-49	JJ	96½	3 2 2	3 8 10
New South Wales 3½% 1930-50	JJ	92	3 16 1	4 8 9
New Zealand 3% 1945	AO	89⅛	3 7 0	5 1 6
Nigeria 4% 1963	AO	102½	3 18 1	3 16 10
Queensland 3½% 1950-70	JJ	87½	4 0 0	4 4 8
*South Africa 3½% 1953-73	JD	99½	3 10 4	3 10 6
Victoria 3½% 1929-49	AO	91	3 16 11	4 11 3
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	80	3 15 0	—
Croydon 3% 1940–60	AO	91	3 5 11	3 12 4
*Essex County 3½% 1952-72	JD	99½	3 10 4	3 10 6
Leeds 3% 1927 or after	JJ	79½	3 15 6	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	93	3 15 3	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	64½	3 17 6	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	77	3 17 11	—
Manchester 3% 1941 or after	FA	79	3 15 11	—
Metropolitan Consd. 2½% 1920-49	MJSD	93	2 13 9	3 6 7
Metropolitan Water Board 3% "A" 1963-2003	AO	81½	3 13 7	3 15 2
Do. do. 3% "B" 1934-2003	MS	81½	3 13 7	3 15 2
Do. do. 3% "E" 1953-73	JJ	91	3 5 11	3 9 1
*Middlesex County Council 4% 1952-72	MN	105	3 16 2	3 10 10
* Do. do. 4½% 1950-70	MN	110	4 1 10	3 9 4
Nottingham 3% Irredeemable	MN	80	3 15 0	—
Sheffield Corp. 3½% 1968	JJ	99	3 10 8	3 11 1
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	96	4 3 4	—
Gt. Western Rly. 4½% Debenture	JJ	106	4 4 11	—
Gt. Western Rly. 5% Debenture	JJ	115½	4 6 7	—
Gt. Western Rly. 5% Rent Charge	FA	107½	4 13 0	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	101	4 19 0	—
Gt. Western Rly. 5% Preference	MA	79	6 6 7	—
Southern Rly. 4% Debenture	JJ	93½	4 5 7	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	101½	3 18 10	3 18 0
Southern Rly. 5% Guaranteed	MA	106	4 14 4	—
Southern Rly. 5% Preference	MA	90½	5 10 6	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.